United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,

Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume XIII—Pages A-8161 to A-8840

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Now, in connection with the charges contained in the mail fraud counts, and in the Interstate Land Sales Full Disclosure Act counts, which we will discuss shortly, it is not necessary for the government to prove that each defendant personally did each of the acts constituting the essential elements of the crime.

The guilt of a defendant may be established without proof that he himself actually did every act constituting the offense. This is so because anyone who knowingly aids, abets, counsels, induces or procures the commission of a crime against the United States is punishable as a principal.

In order for a defendant to aid or abet another to commit a crime, it is necessary that he wilfully associate himself in some way with the criminal venture knowing the essential elements of the offense, as I have outlined it for you, that he wilfully participated in it as something that he wishes to bring about, that he wilfully seeks by some action of his to make it succeed.

Mere presence and guilty knowledge on the part of a defendant that a crime is being committed is not sufficient unless you are also convinced beyond a reasonable doubt that the defendant was doing something to forward the crime, that he was a participant rather than merely a knowing spectator.

You have listened very attentively to the testimony during the course of the trial. Counsel for defendants and the government have spent the last three days in presenting their version of the testimony and the inferences they ask you to draw from that testimony.

I will only treat all these contentions in broad terms as they apply to the mail fraud counts and the Interstate Land Sales Full Disclosure counts which I will describe for you in a moment.

Obviously I cannot review all of the evidence in this case, and my failure to mention any particular fact or set of facts does not mean that it is not to be considered by you in determining the guilt or innocence of each of the defendants.

If any reference by me to matters of evidence does not coincide with your recollection of the evidence, it is your recollection and not mine that is to control.

The government contends that the proof shows that defendants made false and misleading statements and created an overall false impression which was generally misleading to persons or average prudence concerning the investment value of Rio Rancho.

The government contends that this land was sold to purchasers primarily as a safe and secure investment. As evidence of this purpose, the government points to the sales scripts used by the managers at dinners.

The government contends that defendants made fraudulent representations to purchasers that the entire property would be developed with utilities, water, et cetera, which would have provided a basis for appreciation in value of the property.

It is claimed that these representations were false in view of the testimony that only five percent of purchasers would be expected to build on their property and that utilities only existed in company owned exchange areas.

It is not the government contention that it was financially impossible for the defendants to honor their contractual obligations regarding utilities, the government contends that the defendants did not intend to honor those obligations.

The government urges that the evidence also shows that there was no resales market for the land, which is an indicia of a good investment, and that in view of the availability of lands in and closer to Albuquerque, there was no reason to believe there would be a resale market in the future.

The government points to the testimony of representations as to the setting up of a resale office when the first 55,000 acres was sold out as being false in light of the purchase of the additional 37,000 acres which postponed indefinitely the opening of a resale office.

The government argues that the proof shows that defendants made fraudulent representations that Albuquerque was bursting at the seams and the only way it could grow was to the northwest to and through Rio Rancho.

To support this contention the government relies on the films, "Your Golden Future" and "West Side Story", the speaker presentations at dinners and various printed promotional brochures.

The government points to the assertions made in these materials that Albuquerque is surrounded on three sides preventing future growth in those directions. It also points to assertions that at the present time most new growth was occurring in the northwest.

The government then relies on the testimony of Pierce, Carruthers, Avellanet, Seay and Musgrove and various studies that were made of the future development of Albuquerque to support its contention that these statements were false and that the defendants knew they were false.

Pierce testified that the Atrisco land grant was available for development certainly in 1972.

Carruthers has testified that using population density figures for the last twenty years there was sufficient land in the urban Albuquerque area, omitting Rio Rancho, to accommodate approximately 1,100,000 people.

Avellanet has testified that his 1966 report to Rio Rancho Estates advised that despite the expected doubling of the population of Albuquerque over the succeeding twenty years, there was ample undeveloped suburban land to take care of the growth without even reaching Rio Rancho Estates.

All of these witnesses testified that in their opinion it was not true that Albuquerque could only grow to the northwest.

These witnesses to whom I have referred testified that the greatest absolute growth in the last fifteen years occurred in the northeast section of Albuquerque.

Lastly, the government relies on a statement by AMREP in a report filed in 1962 with the Securities and Exchange Commission that AMREP does not know what growth, if any, Albuquerque would experience in the future.

Finally, along with those portions of the proof alleged to show the defendants knowingly and wilfully made false representations as part of the scheme to defraud, the government points to the testimony detailing the so-called high pressure procedures at the sales dinners and at Rio Rancho, which the government claims buttresses its contention that the defendants were engaged in a fraudulent scheme.

The defendant deny that they are guilty of any of the charges contained in this indictment. In the first place, they argue that what was said in the films, the printed promotional material, the sales presentations at the dinners, and the reports filed with the various regulatory agencies is true. In addition they claim that even if the statements are found to be untrue, they had a honest belief that the statements made in those materials were true. They have advanced many examples for your consideration that these contentions are correct, and that they never intended to make any false representations.

They point to the fifteen years of construction and growth in the Rio Rancho developed community, which is still continuing. They bring out their adherence to all state and federal agency regulations and their complete compliance with all contract promises.

Here I want to mention that the filing of property reports and promotional material with state and federal agencies is required by law. The acceptance by the agency of the filing and, of course, giving an NYA number for a brochure, indicates only that the defendants furnished the information required by state law. It does not indicate a view by the governmental agency as to the truth or falsity of the statements contained in such material.

The defendants point to the exchange privilege and refund privilege as evidence of their lack of intent to defraud anyone. They point to the careful and detailed instructions to salesmen to prevent any misstatements and the fact that they fired salesmen who disobeyed their orders.

Also, the defendants argue that they incurred development expenses in excess of their obligations, such as in the maintenance of common facilities. The fact that the land was sold for profit in excess of its original cost and subsequent expenses is in itself not fraudulent.

The defendants maintain that Rio Rancho lots were sold both for relocation and long term investment and not speculation and that the long term investment representation was without any specification of time.

As evidence of the investment potential, they point to the growing community of Rio Rancho and the successful profits made by Reverend Schleibe, Mr. Mols and Mrs. Mellenbrook in the sale of their lots.

The defendants contend that they had reason to believe in the truth of their representstions as to Albuquerque's growth to and through Rio Rancho at the time they were made and they are indeed correct.

They point to Yguado's testimony concerning constraints to development on three sides of Albuquerque and the logical path of growth to the northwest. They point to the cross examination of Carruthers, Pierce and Avellanet during which numerous constraints, both geological and legal, were admitted to exist on three sides of Albuquerque.

For example, Carruthers' testimony on cross examination that a large proportion of the Atrisco grant is the subject of present title litigation and he doesn'tknow what the outcome will be.

Finally, the defendants point to the testimony of witnesses happy with their relocation at Rio Rancho and their investment. They attack the credibility of the government's witnesses and argue that the government witnesse are not, in fact, representative purchasers who bought land at Rio Rancho.

The remaining five counts charge the defendants with violating the Interstate Land Sales Full Disclosure Act. This statute makes it a crime for a land developer or agent who sells or offers to sell any lot in the subdivision to make use of any means of communication in interstate commerce to defraud purchasers of land. In determining whether the government has met its burden of proof under this statute and these last five counts, you may only consider evidence of conduct after May 1, 1969, since that is the date the statute took effect.

In order to find a defendant guilty under a count charging a violation of the Interstate Land Sales Full Disclosure Act, the government must establish beyond a reasonable doubt each of the following essential elements:

First. That each defendant was a developer or agent, as I will define these words for you, at the time of the acts charged in the indictment.

Second. That in selling or offering to sell lots in the subdivision, the defendant employed any device, scheme or artifice to defraud or engage in any transaction, practice or course of business which operated or would operate as a fraud or deceit upon a purchaser.

Third. That the defendant acted wilfully and knowingly, and

Fourth. That the defendant or his agents, directly or indirectly, used means or instruments of communication in interstate commerce.

The first element that you must find proved beyond a reasonable doubt is that each defendant whose guilt or innocence you are considering was a developer or agent of a developer.

A developer is a corporation which, directly or indirectly, sells or offers to sell or advertises for sale any lots in a single subdivision divided into or proposed to be divided into fifty or more lots.

An agent is any person who represents, or acts for or on behalf of, a developer in selling, or offering to sell any lot or lots in the subdivision.

There is no dispute that Rio Rancho Estates is a development or a subdivision containing well over fifty lots.

The second element which you must find beyond a reasonable doubt is that the defendant, in selling or offering to sell any lot, employed any device, scheme or artifice to defraud, or engaged in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

I have already defined this for you with respect to the mail fraud charges, and the definition is the same with respect to these five counts of the indictment.

The third element you must find beyond a reasonable doubt is that the defendant acted wilfully and knowingly. This has also been defined for you with respect to the mail fraud charges and the definition is the same with respect to these counts.

Finally, you mustfind beyond a reasonable doubt that the defendant or its agents, directly or indirectly, used means or instruments of communication in interstate commerce.

Count 71 alleges that on November 22, 1974, an advertisement for Rio Rancho land was aired over WOR-TV.

Count 72 alleges that on November 18, 1974, an advertisement was aired over WPOX-TV.

Count 73 that an advertisement on November 24, 1974 was aired over WNET-TV.

Count 75 alleges that an advertisement was aired over WCBS-TV on March 25, 1975.

Count 79 alleges that an advertisement was aired on July 6, 1973 over WCBS-Radio.

The government has introduced evidence of Rio Rancho commercials which were aired on both radio and television.

I charge you as a matter of law that the television and radio advertisements, if you find that they were used, are instruments of communication in interstate commerce.

As you remember when we discussed the mailings in the mail fraud counts, it is not necessary for the government to prove that a defendant knew or directly participated in the mailings. It is sufficient if you were convinced beyond a reasonable doubt that a defendant participated in the scheme to defraud and that he could have reasonably foreseen that the mails would be used in furtherance of the scheme even if the mailing was actually done by someone entirely unconnected with him.

The same principal applies here as to the use of instruments of communication in interstate commerce.

Of course, there is no dispute here about the actual airing of the television and radio advertisements.

Again, as I have told you earlier, it is not necessary for the government to prove that each defendant personally did each of the acts constituting the essential elements of the crime of violating the Interstate Land Sales Full Disclosure Act.

As I explained before, a defendant can be found guilty of violating the statute if he knowingly aids, abets, counsels, induces or procures the commission of the crime alleged in the indictment.

In determining the guilt or innocence of a defendant, you must decide that question solely from the evidence you heard from the witness stand, and the exhibits that have been placed before you.

The summations of counsel, which you have heard, are not to be considered as evidence, but only as arguments to you as to what counsel feel you should find from the evidence. Statements made by counsel in arguing the admissibility of proposed evidence and colloquies between the Court and counsel with respect to admission or rejection of such evidence are not evidence to be considered by you in your deliberations.

In determining the issues in this case, it is your recollection of the testimony that is to govern and not that of counsel, or of the Court.

If, during the course of the trial, the Court sustained an obligation by one counsel to a question asked by the examining counsel, you are to disregard the question and any alleged facts contained in the question, and you may not speculate as to what the answer would have been.

If a question was asked and an answer given by the witness, and I have then stricken the answer from the record, you are to disregard both the question and the answer in your deliberations.

The Court's function is not only to preside at the trial, but to assure it is tried within the framework of the Rules of Evidence and to clarify matters that are at issue in the trial.

At various times during the trial, so-called side bar conferences were held out of your hearing. They related to matters of law, which do not concern you, and so these conferences or their purposes may not enter into your deliberations.

During the course of trial, on several occasions, I admonished counsel, both for the government and for the defense. Sometimes lawyers, in the zeal of advocacy, make statements which in calmer moments they would not and should not have made.

Now, there are, generally speaking, two types of evidence from which a jury can properly find the truth as to the facts of a case.

One is direct evidence, such as the testimony of an eyewitness.

The other is indirect or circumstantial evidence which is the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

Circumstantial evidence is the proof of facts from which you may reasonably infer a material element of the crime.

Let us take one simple example to illustrate what is meant by circumstantial evidence. We will assume that when you entered the courthouse this morning the sun was shining brightly outside and it was a clear day. There was no rain.

Assume that in the courtroom the blinds are drawn, the drapes are drawn. so that you cannot look outside.

Assume as you are sitting in this jury box, and despite the fact that it was dry when you entered the building, someone walks in with an umbrella dripping water, followed in a short time by a person with a raincoat which is wet.

If you are asked whether it is raining now, you cannot say of your own knowledge that you know that it is raining now. But certainly upon the combination of facts, which I have stated to you, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is raining now.

That is about all there is to circumstantial evidence. You may draw such inferences as reason and common sense lead you to draw from facts which you find have been proven.

Great care must be exercised in drawing inferences from circumstances proved in criminal cases, and mere suspicions will not warrant a conviction.

However, no greater degree of certainty is required of circumstantial evidence than is required of direct evidence. It is not on any different or lower plane than direct evidence. The law simply requires that in either case you must be convinced beyond a reasonable doubt of the guilt of a defendant.

In your search for the truth, you must use plain everyday common sense. You must not be governed by sympathy, bias or prejudice.

You have seen the witnesses on the stand and observed their manner of testifying. How did they impress you?

Did they appear to be testifying frankly, candidly and fairly?

In determining what degree of credit you should give a witness' testimony, you may consider his direct examination, his cross examination and his redirect examination.

You should consider his conduct, his manner of testifying and his interest in the outcome of the litigation.

You should also consider his relationship to the government or the defendants, his bias or impartiality or any motive he may have to testify falsely.

It does not necessarily follow, of course, that because a person is interested in the result, is incapable of telling a truthful version of an occurrence.

If you believe that a witness has testified falsely as to any material fact, you may disregard his testimony all together or you may accept that part of his testimony which you believe worthy of credence.

What you accept or reject as credible evidence is for you to determine, but you may not go outside the evidence to speculate as to the facts.

The quality of the testimony of particular witnesses, regardless of who calls them, rather than the quantity of witnesses, is the test to be used in arriving at your decision. There is no presumption that the witnesses for the government are more or less truthful or credible than the witnesses for a defendant.

You should consider inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, which may or may not cause you to discredit such testimony.

Two or more persons witnessing an incident or a transaction may see or hear it differently.

Innocent misrecollection, like failure of recollection, is not an unusual experience. In weighing the effect of the discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood.

You will recall the witnesses McCorkle and Sader wee asked about statements they made under oath before the grand jury and in which it is claimed they appear to be inconsistent with their statements at this trial. If a witness at trial affirms the truth of the statement made under oath before the grand jury, then you may consider the statement before the grand jury both as affirmative proof of the facts contained in it, as well as bearing on the credibility of the witnesses.

Evidence that Daniel Monaco has been convicted of a crime may only be considered by you in assessing his credibility as a witness and the weight you will give to his testimony.

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Similarly, the fact that Nicholas Masone was given immunity from prosecution in return for his testimony may only be considered by you in assessing his credibility as a witness and the weight you till give his testimony.

Some question has been raised in summation by both the government and the defendants about the failure to call certain persons to testify on this trial. They include Flatou, Walsh, Sommerholder and Hollander.

I point out to you that none of these witnesses is under the control of either the government of the defendants. Any party could have subpoenaed one or all of them to appear as witnesses. Therefore, you are free to draw whatever inference you wish as to the failure of either party to call any of these persons as witnesses or you need not draw any inference at all if you do not wish to.

Remember, as I have already told you, that the burden of proving every material element of the crime alleged is on the government and a defendant has no burden to call any witnesses.

In this case, you have heard the testimony of expert witnesses. How do you, as laymen, determine the facts from expert testimony?

You are to act in exactly the same way that you would appraise and determine the credibility of an ordinary witness as I have already outlined for you.

Ordinary witnesses are allowed to tell you only what they see, hear or experience. An expert witness is permitted to tell you his opinion by reason of his training and knowledge in a particular field.

As you all know, an opinion is something a witness forms in his own mind based on specific facts from which, using his judgment, training and experience, he draws certain conclusions.

Of course, if you don't believe the facts which form the basis of the expert's opinion, then his opinion is valueless. But otherwise, you will treat an expert's opinion as evidence which you have heard.

You may accept it or you may reject it in whole or in part, and it is entirely up to you as to what you will do with an expert's testimony and what credibility you will give to it.

You may call for any exhibits which you desire to see in conjunction with your deliberations, you may call for the readin of any portion of the official transcript or any portion of this charge.

I think that covers it as far as the charge is concerned.

MS. HYNES: One last paragraph, your Honor.

THE COURT: What?

MS. HYNES: The next paragraph.

THE COURT: I think there is nothing else for me to tell the jury.

You may retire.

(At 3:20 p.m., the jury returned to the jury room to continue to deliberate upon a verdict.)

MR. ARKIN: Your Honor, I know that we have made exceptions to your Honor's charge previously and I don't believe there is any need to renew them, but I must again, in hearing your Honor's charge for the second time, bring my exception in two particular respects.

That is particularly the marshaling of the contentions in respect to the defense view of good investment, because I must say that as I heard it, the prosecution's contentions were -- I mean this most respectfully -- more fullsomely set forth than our own.

In particular, we had argued, I think, very completely that the use of the raw land, that is, the undevelope land to trade in and get an exchange lot, that is, a lot which was developed, is an aspect of good investment, that the fact that the Albuquerque Federal Savings & Loan had invested in the area, had put mortgage money in the area was an element of good investment or an aspect of good investment; the fact that the FHA appraised the developed lots at $5400 per lot was an aspect of good development; and that the truism of prices rising throughout the country in real estate and in particular the Albuquerque area in nearby Rio Rancho is an aspect of good investment.

This is the same line, your Honor, the contention which the jury seems to be focusing on at this very moment, which is the acquisition of the 37,000 acres --

THE COURT: Mr. Arkin, I will not entertain any objection from you based on what the jury presently is focusing on because of requests they had made.

MR. ARKIN: Let me just say, your Honor, in view of the overall marshaling of the contentions, it seems to me that the government contention with respect to the 37,000 acres was marshaled, but that our contentions in respect to the 37,000 acres were not.

THE COURT: I told the jury what I was doing broad contentions, it is their recollection of the evidence which was to control.

You spent six and a half hours telling them what your contentions were. That is enough.

MR. ARKIN: If your Honor please --

THE COURT: Every time there is a marshaling of evidence, there is always an objection from the defense "You didn't say this for us."

There are four and a half pages for the government and there is four and a half pages for the defendants.

MR. ARKIN: Your Honor, I appreciate the position you are in --

THE COURT: You have made the objection before. Let us forget about it. I am not going to change it.

MR. ARKIN: Your Honor, may I make my record, even if --

THE COURT: You made the record before, at the end of the entire charge.

This is not atime to object to a charge. You had sufficient time then and you made your record.

MR. ARKIN: Well, if your Honor please, then, the objections which we made in the robing room and now, I take it, are part of the record.

I must say the difference between your Honor saying it and me saying it, however credible I may be or Mr. Fleming may be, is not the same thing, it really is not.

THE COURT: Mr. Arkin, you repeat, every time a judge marshaled evidence, I have never seen it to fail that the defendant gets up and says, "You didn't say this, Judge, you didn't say that, Judge."

If I did that I would spend the same 12 hours that both sides spent here in summation.

I think it is fair. If you think I left something out, I am sorry, but I did it as fairly as I could. Maybe I didn't stress what you thought should be stressed, but you talked for three and a half hours, Mr. Fleming talked for three hours, Mr. Lavinsky sopke for a half hour. If you didn't get over to that jury in your summations what you were thinking about, then that is your problem, that is not mine.

MR. ARKIN: I am not suggesting I didn't get it over, your Honor, what I am suggesting is that I am different than your Honor, that's all. That is the point.

THE COURT: I can't do it. I can't sit here for ten hours reviewing everything you said and take witness after witness and say, "He said this and he said that and he said the next thing."

You have the same thing with credibility. The government puts a witness on the stand and they say something.

They say, "Yes, the defendants asked these questions and that is to attack his credibility."

However do you want me to go on this, Mr. Arkin?

MR. ARKIN: The distance I wanted you to go was what I just mentioned, your Honor, in marshaling the contentions with respect to investments which is the focal point on this case which I don't think would have taken four hours or six hours or even a half hour.

THE COURT: Then the government would have come in and said, "We want this, your Honor. We want this in."

MR. ARKIN: I don't think it is an unending process,your Honor.

THE COURT: Of course it is an unending process.

You have made your point, Mr. Arkin, and I will not entertain at this time, when the jury has asked to have the charge reread, any objections to the charge. You had sufficient time to prepare your requests to charge, you had sufficient time to make your objections when the jury was recessed and I specifically gave you time to make those objections.

MR. ARKIN: Your Honor, may I, without taxing your Honor -- I understand what your Honor's rulings are and obviously I am going to abide by them which I have for two and a half months.

May I for my record, so I rest easier, merely read four requests into the record?

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THE COURT: Requests? No.

MR. ARKIN: Very well, your Honor.

THE COURT: You had a week ago Tuesday to do that.

MR. ARKIN: I appreciate that I did, your Honor. On the other hand, sometimes things come to mind after deadline.

THE COURT: Too late. You had sufficient time. the jury was charged --

MR. ARKIN: Thursday, your Honor.

THE COURT: -- on Thursday and today is Monday. You are coming up now with additional requests to charge?

MR. ARKIN: Additional requests now that we understand how the issue is being focused.

THE COURT: You don't know how the issue is being focused. That is what you are assuming because of certain evidence they have asked for.

But you knew how the government focused the issue. You heard Ms. Hynes sum up for three hours and you knew what the issue was.

MR. ARKIN: If your Honor please --

THE COURT: And I entertained, I should remind you, requests to charge after summations were over. Mr. Fleming submitted two or three or you did. But not four days later.

MR. ARKIN: Well, your Honor, they are still deliberating --

THE COURT: It is too bad.

MR. ARKIN: And I did hear Ms. Hynes sum up and that doesn't mean I was fully cognizant of everything she had to say.

THE COURT: You had overnight to think about it. That Tuesday you summed up, Fleming summed up on Wednesday.

I am referring to what she said on Monday.

So you had 48 hours with the transcript in front of you --

MR. ARKIN: No, your Honor.

THE COURT: -- if you had any objections.

MR. ARKIN: Your Honor, merely my point is --

THE COURT: With seven lawyers sitting around reading it.

MR. ARKIN: Your Honor, I don't want to engage in any kind of --

THE COURT: No. I want the record to show the background of your request.

MR. ARKIN: I appreciate exactly what your Honor is saying. I know that. I know your Honor wants to show what the background is.

What I am suggesting, your Honor, is that summations by counsel are a very different thing than the marshaling by your Honor. That is all I am suggesting. I mean it most respectfully. And my ears hear very clearly what your Honor says, what Ms. Hynes says and what Mr. Fleming says. That's all I am saying.

THE COURT: The whole point of summation is to highlight for the jury what you think the prime issues are, and I repeat, Ms. Hynes told you her version on Monday morning, you summed up on Tuesday, Mr. Fleming summed up on Wednesday, you had 48 hours to put your version to this jury, which is more than the time available than most defendants' counsel have.

MR. ARKIN: My request, my supplemental requests, which your Honor doesn't want to hear, I understand that, I am not going to press it, was really brought to my mind in large part by, you know, hearing your Honor's charge and hearing it again for a second time.

THE COURT: And by what the jury asked for, Mr. Arkin.

MR. ARKIN: And by what the jury asked for, yes.

THE COURT: And if the jury comes in in a half hour with a request, you will have another request to charge to cover that request from your point of view. That has been your approach as I see it, Mr. Arkin.

I am finished.

MR. FLEMING: I must join, on the record, in that objection.

MR. LAVINSKY: I join in with my corporations, your Honor.

THE COURT: The same ruling.

(Continued on next page.)

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(In open court; jury present at 3:55 p.m.)

THE CLERK: Ladies and gentlemen of the jury, I am about to take your role call and I would ask that you please answer as your name is called.

THE CLERK: Mr. Cuccia?

JUROR NO. 1: Here.

THE CLERK: Miss Eager?

JUROR NO. 2: Here.

THE CLERK: Mrs. Marks?

JUROR NO. 3: Here.

THE CLERK: Mrs. Young?

JUROR NO. 4: Here.

THE CLERK: Mr. Weinhouse?

JUROR NO. 5: Here.

THE CLERK: Mrs. Russo?

JUROR NO. 6: Here.

THE CLERK: Mr. Ramos?

JUROR NO. 7: Here.

THE CLERK: Mrs. Patrick?

JUROR NO. 8: Here.

THE CLERK: Mr. Haenlein?

JUROR NO. 9: Yes.

THE CLERK: Mr. Tirado?

JUROR NO. 10: Here.

THE CLERK: Mrs. Stefani?

JUROR NO. 11: Here.

THE CLERK: Mr. O'Leary?

JUROR NO. 12: Here.

THE CLERK: Mr. Foreman, have you all agreed upon a verdict?

THE FOREMAN: Yes.

THE CLERK: How do you find the defendant AMREP Corporation as to Count 7?

THE FOREMAN: Your Honor, we the jury find all defendants guilty on all counts.

THE CLERK: So say you all?

(Affirmative.)

MR. FLEMING: May we have the jury polled, your Honor?

THE COURT: You don't want them to record as to each individual count, do you, just as to the guilt or not guilty, Mr. Fleming?

MR. ARKIN: I think, if your Honor please, if the polling were in general terms that would be sufficient.

THE COURT: All right.

THE CLERK: Ladies and gentlemen of the jury, I want you to please listen to your verdict as it now stands recorded. You say you find the defendants AMREP Corporation, Rio Rancho Estates, Inc., ATC Realty Corporation, Mr. Howard W. Friedman, Mr. Chester Carity, Mr. Henry L. Hoffman and Mr. Daniel Friedman guilty as to each count of Indictment No. 65 Criminal 644.

I ask you, Mr. Cuccia, is that your verdict?

THE FOREMAN: Yes.

THE CLERK: Mrs. Eager, is that your verdict?

JUROR NO. 2: Yes.

THE CLERK: Mrs. Marks, is that your verdict?

JUROR NO. 3: Yes.

THE CLERK: Mrs. Young?

JUROR NO. 4: Yes.

THE CLERK: Mr. Weinhouse, is that your verdict?

JUROR NO. 5: Yes.

THE CLERK: Mrs. Russo, is that your verdict?

JUROR NO. 6: Yes.

THE CLERK: Mr. Ramos, is that your verdict?

JUROR NO. 7: Yes.

THE CLERK: Mrs. Patrick, is that your verdict?

JUROR NO. 8: Yes.

THE CLERK: Mr. Haenlein, is that your verdict?

JUROR NO. 9: Yes.

THE CLERK: Mr. Tirado, is that your verdict?

JUROR NO. 10: Yes.

THE CLERK: Mrs. Stefani, is that your verdict?

JUROR NO. 11: Yes.

THE CLERK: Mr. O'Leary, is that your verdict?

JUROR NO. 12: Yes, sir.

THE COURT: Ladies and gentlemen of the jury, you listened very carefully to the evidence in this trial, which ran some 12 weeks, and you carefully weighed the evidence. You have been in session starting around noontime on Thursday and continued all day Friday and Saturday until a quarter to four.

You obviously have come to the conclusion after weighing all the evidence that you have reached the correct verdict. The essence of the system that we operate under is that the jury carefully weigh the evidence and if they do that, they have discharged their duty as jurors and the defendants have been tried according to the law and procedure of this land of ours.

I want to thank you especially for your attention during this trial. It has been a long, it took through Christmas and New Year's in terrifically cold weather, and I don't think there has been a jury in this court house where we started out with 18 jurors on November 3rd and reached the time of the charge, which was January 13th, and all 18 are still sitting here.

I am sure your colleagues would have liked to have participated in your deliberations. I want to thank you especially. It is just the luck of the draw that you were the 12 and not one of them.

Thank you very much. You are excused now, they tell me, until you get your next jury notice.

The clerk will give you your certificates.

(Jury excused and left the courtroom.)

THE COURT: Do you want to reserve motions?

MR. FLEMING: Yes, your Honor, I do.

THE COURT: What date for sentencing?

March 4th.

MR. FLEMING: Very well, your Honor.

THE COURT: March 4th. What courtroom?

THE CLERK: 307. your Honor.

THE COURT: Room 307, 10:00 a.m. I think in this case that papers should be filed formally the Friday before so that I will have an opportunity to look at them.

MR. FLEMING: Very well, your Honor.

THE COURT: And the government will have an opportunity so that will be March 1st to file formal motion papers.

MR. FLEMING: May bail status be continued, if your Honor please?

THE COURT: Yes.

MR. ARKIN: Would it be appropriate to report to probation tomorrow morning?

THE COURT: Yes.

(End at 4:20 p.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
-against- :
:
AMREP CORPORATION, et al., :
:
Defendants. :
:
-------------------------------X

REQUESTS TO CHARGE SUBMITTED IN BEHALF OF CHESTER CARITY, DANIEL FRIEDMAN, HOWARD FRIEDMAN, HENRY HOFFMAN, AMREP CORPORATION, RIO RANCHO ESTATES AND ATC CORPORATION

ROLE OF COURT AND JURY

Request No. 1

The evidence is now in, and the lawyers have made their final arguments. It is time for you to exercise your final role--to decide the issues of fact and to return a verdict.

My function at this point is to tell you what issues of fact you have to decide and to tell you what standards to apply in deciding those issues. These standards are matters of law, and it is your duty to apply the law in accordance with my instructions. That is, you must base your verdict upon a decision of the questions of fact which I am about to pose to you, and in deciding those questions of fact, you must apply the standards of law which I am about to describe.

With respect to any issue of fact, it is your recollection and yours alone that governs. Nothing that the lawyers for either the defendants or the prosecution may have said during the trial with respect to matters of fact is to be considered by you as evidence, nor is it to be substituted for your own recollection of the evidence.

At times throughout the trial I have been called upon to make rulings on various matters of law. I have sustained objections, and I have overruled objections. Please do not concern yourselves at all with my reasons for doing so. Those are purely legal matters and should not affect your deliberation on the factual matters in this case. Similarly, you are not to concern yourselves with conferences which took place at the side bar, nor are you to draw any inferences for or against any party because of a request for such a conference.

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF

Request No. 2

The defendants have entered pleas of not guilty to the charges in the indictment and thus the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The law presumes a defendant to be innocent of crime. A defendant begins the trial with no evidence against him and the law permits nothing but legal evidence presented before you as jurors to be considered in support of any charge against a defendant.

The presumption of innocence remains with the defendants throughout the trial and throughout your deliberations until such time, if ever, that you as a jury is satisfied of guilt beyond a reasonable doubt. The presumption of innocence alone is sufficient to require the acquittal of a defendant unless and until after careful and impartial consideration of all the evidence in the case you as jurors are unanimously convinced of a defendant's guilt beyond a reasonable doubt.

I told you when we first met, and I repeat, that a defendant in a criminal case does not have to prove his

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PRESENT: Hon. CHARLES M. METZNER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America

vs

76 cr. 644

AMREP Corp.
Rio Rancho Estates Inc.
ATC Realty Corp.
Howard W. Friedman
Chester Carity
Irving W. Blum
Henry L. Hoffman
Herman B. Oberman
Solomon H. Friend and
Daniel Friedman

APPEARANCES

Govt.	by	Patricia Hynes Michael Devorkin Allan Kaufman
Defts. AMREP RIO RANCHO ATC REALTY	by	George Gallantz Larry M. Lavinsky
Chester Carity Daniel Friedman	by	Peter Fleming John Sprizzo
Howard Friedman Henry Hoffman	by	Stanley Arkin
Irving Blum	by	Jack Hoffinger David Bernfeld
Herman Oberman	by	Carl Rubino
Solomon Friend	by	William Glendon

innocence. He is - - and you have heard the expression - - presumed to be innocent. Though it is a familiar expression, it is basic to the fair administration of justice. A defendant is presumed to be innocent, and that presumption stays with him throughout the case. It will remain with him when you go to deliberate in the jury room. That presumption is sufficient in itself to require that you acquit the defendant until or unless you are convinced beyond a reasonable doubt of his guilt.

Adopted from instructions of Judge Frankel is United States v. Carson and of Judge Tenney in United States v. Bronston.

REASONABLE DOUBT

Request No. 3

The question that naturally comes up is what is a reasonable doubt? The words almost define themselves. That there is a doubt formed in reason, and rising out of evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It means a doubt that is substantial and not merely shadowy.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few men might ever be convicted. It might be impossible for a person to be absolutely and completely convinced of any controverted fact, which by its nature, is not susceptible of mathematical certainty.

In consequence, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

If after such a fair and impartial consideration of all the evidence you can candidly and honestly say that you are satisfied of the guilt of a defendant beyond a reasonable doubt, that you have an abiding conviction of a defendant's guilt, which amounts to a moral certainty, such as you would be willing to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and, in that circumstance, it is your duty to convict.

However, if after a fair and impartial consideration of all the evidence, you cannot candidly and honestly say that you are satisfied of the guilt of a defendant, and if you do not have an abiding conviction of guilt which amounts to a moral certainty, then you have a reasonable doubt and, in that circumstance, it is your duty to acquit.

Putting it more plainly, if you were confronted with an important personal decision, and after reviewing all the factors that were pertinent, you had doubt and uncertainty and were unsure of your judgment, then you would have a reasonable doubt.

Asking you to keep in mind the several things I have said to try to make this concept real and vivid for you, let me say that I trust you will carry from these instructions a recognition that the burden of proof assumed by the government in a criminal case is a very high one, and that you may not convict unless you find in the end that your minds are free of the kind of reservation and uncertainty I have undertaken to describe.

Adopted from the charges of Judge Weinfield in United States v. Kahaner and of Judge Frankel in United States v. Carson.

REASONABLE DOUBT

Request No. 4

A reasonable doubt means a doubt that is based on reason. It is a doubt which is sufficient to cause a reasonably prudent person to hesitate to act in the more important affairs of his life. To bring in a verdict of guilty, you must be convinced of guilt to a moral certainty.

In a civil case all the plaintiff has to do is to establish his case by what we call a preponderence of evidence. That boils down to mean it is more likely than not that what the plaintiff in a civil case has asserted is true. If it is more likely than not--that is, only somewhat more than 50 percent--that the plaintiff's version is true, the jury is entitled to give the plaintiff its verdict.

As the case gets more serious in the context of our relationships with one another, there is greater evidence required. For example, in a case where a woman is trying to establish that a man is the father of her child, "substantial evidence" is required--more than a preponderence. In other civil cases where malice is charged, the evidence must be greater still--clear and convincing.

That may be fine, and indeed it is fine when all that is being found is whether A should pay B money. But the purpose of the prosecution in bringing a criminal case is to secure a judgment which will authorize the Court, that is me, to commit the defendants to jail. Our liberties wouldn't be worth much if it would be permissible to put a man in jail just because his guilt seemed more probable than his innocence. Therefore, the law says guilt must be established beyond a reasonable doubt.

There are two words in that definition, "reasonable" and "doubt." The meaning of "doubt" is self-evident. The word "reasonable" is equally self-evident when you analyze it. It means a doubt for which you can give a reason. If after a fair and impartial consideration of all the evidence you can candidly and honestly say that you are not satisfied of the guilt of the defendants, that you do not have an abiding conviction of the defendants' guilt which amounts to a moral certainty; in sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt, and in such circumstances, it would be your duty to acquit.

A reasonable doubt has to be based on evidence or lack of evidence. Otherwise how could you discuss your doubt or your lack of doubt with your fellow jurors if your discussion isn't based on what is common to all of you, the evidence in this case? The only thing that is common to all of you is the evidence in this case or the lack of evidence in this case, and therefore. unless you confine yourself to that, you won't be functioning as a jury; you would be functioning as a group of miscellaneous individuals.

Of course, your duty to discuss your doubts or lack of them with each other does not mean that any juror should give up any opinion he or she strongly holds simply because he or she may be in a minority. On the contrary, each of you should adhere to his or her conscientiously held opinions unless and until your fellow jurors convince you that it is wrong.

Adopted in part from charge to the jury in United States v. Hraoui, 73 Cr. 1087, Hon. Whitman Knapp, United States District Judge, Southern District of New York.

DEFENDANT'S RIGHT NOT TO TESTIFY

Request No. 5

The defendants did not testify in their own behalf in this case. Under our Constitution they had no obligation to testify or present any other evidence because the burden of proof is solely with the prosecution. That burden remains with the prosecution throughout the entire trial and never shifts to the defendants. The defendants are presumed innocent.

You may not consider in any way whatever or attach any significance to the fact that the defendants availed themselves of their constitutional right not to testify. No adverse inference against the defendants may be drawn by you because of their exercise of their constitutional privilege.

United States v. Fassoulis, 445 F. 2d 13, 18 (2d Cir.), cert. denied, 404 U.S. 858 (1971); United States v. Kelly, 349 F. 720 (2d Cir. 1965), cert. denied, 348 U.S. 947 (1966).

EVIDENCE: DIRECT AND CIRCUMSTANTIAL

Request No. 6

In the course of your deliberations you will consider both direct and circumstantial evidence. Both types of proof are evidence upon which a jury may rely in deciding the issues of fact presented. Direct evidence is the testimony of a witness as to what he heard and saw, something he knows of his own knowledge, which bears directly on a fact issue in the case.

Circumstantial evidence consists of facts and circumstances from which one may infer other connected facts which inescapably follow in the common experience of mankind. Some circumstantial evidence may be susceptible of more than one inference - perhaps with one inference tending to prove guilt and another innocence. In such a case, in selecting any particular inference, you must keep in mind the presumption of innocence and that the prosecution has the burden of proving a defendant guilty beyond a reasonable doubt.

To use a very simple example, if you look out of the window and see it raining, then your statement that you see rain coming down is direct evidence that it is raining. If instead of looking out of the window, you see a succession of people coming inside, with wet raincoats, rubbers and umbrellas, that observation is circumstantial evidence that it is raining.

CREDIBILITY OF WITNESSES

Request No. 7

Preliminarily, you are to understand that you should not be influenced in any way by the mere number of witnesses called by either side. The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. Rather, you should consider all the facts and circumstances in evidence to determine where the truth lies.

In accessing credibility, you should carefully scrutinize the testimony given, the circumstances under which each witness testified and every matter in evidence which tends to indicate whether the witness is worthy of belief.

The degree of credibility to be given a witness should be determined by his demeanor, his relationship to the controversy and the parties, his bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection, viewed in the light of all other testimony and the attendant circumstances in the case and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

How did the witness impress you? Did his version appear straight-forward and candid? Or did he or she try to hide some of the facts? Is there a motive to testify falsely?

In passing upon the credibility of a witness, you may take into account inconsistencies or contradictions as to material matters in his or her testimony or any conflict with that of another witness.

You may also consider any inconsistencies or omissions in any prior testimony or any prior statement of material matters as to which he or she may have testified upon the trial.

In weighing the effect of a discrepancy in testimony, you may consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or wilful falsehood.

If you find that any witness has testified falsely, you can do one of two things. You can either reject all of that witness' testimony on the ground that it's all tainted by falsehood and that none of it is worthy of belief, or you can accept that part which you believe to be credible and reject only that part which you believe to be tainted by falsehood.

Any testimony rejected by you as false is not in the case insofar as any finding that you may make is concerned.

It is the jury's function to determine the truth or falsity of the testimony of each witness. In passing upon credibility, the ultimate question for you to decide is, did the witnesses tell the truth here before you? It is for you to say whether their testimony at this trial is truthful in whole or in part in the light of their demeanor, their explanations, and all the evidence in the case.

In assessing the credibility of the witness Monaco, you may or may not consider evidence that the witness has in the past been convicted of certain crimes in determining that witness' credibility.

Always the ultimate question is, did the witness testify truthfully before you?

Adapted from Judge Gagliardi's charge in United States v. Mitchell.

A 8212

EXPERT WITNESSES

Request No. 8

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some science, profession, or calling, may state an opinion as to relevant and material matter, in which they are expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves.

County Asphalt, Inc. v. Lewis Welding & Engineering Corp., 444 F. 2d 372, 378 (2d Cir.) *cert. denied*, 404 U.S. 939 (1971).

CREDIBILITY OF PROSECUTION WITNESSES - IMMUNITY

Request No. 9

One of the prosecution witnesses -- Massone -- was given immunity from prosecution in return for his testimony.

You may find that witnesses in such a position may be motivated to place the blame on someone other than themselves. Accordingly, their testimony should be closely examined, weighed with care, checked with the facts which you find to exist in this case, and against the other evidence. Then -- and only then -- should you give this testimony such value or weight as you deem correct under the circumstances.

United States v. Projansky, Trial Transcript 9403; United States v. De Larosa, 450 F. 2d 1057 (3d Cir. 1971), cert. denied, 405 U.S. 957 and 927 (1972); United States v. Fawcett, 115 F. 2d 764 (3d Cir. 1940).

IMPROPER CONSIDERATIONS

Request No. 10

Whatever the nature of the crime charged, a defendant in a criminal case is entitled to the same presumption of innocence, and the prosecution has the same burden of proof. You would be violating your oath as jurors and doing a distinct disservice to your Constitution, and indeed to this Court, not to mention the defendants, by allowing opinions you might have about the nature of the crime charged interfere with your decision making process. Thus, in reaching your decision as to whether or not the prosecution has sustained its burden of proof, you may not allow your personal feelings about the crimes charged affect your efforts in determining the innocence or guilt of the defendants.

Groppi v. Wisconsin, 400 U.S. 509 (1971); *Turner v. Louisiana*, 379 U.S. 466 (1965); *Irvin v. Dowd*, 366 U.S. 717 (1961).

THE INDICTMENT

Request No. 11

The defendants are charged in an indictment. An indictment is not evidence of anything and must not be considered by you as such. It is merely an accusation by the prosecution, a charge.

In making your determination of whether or not the prosecution has proved the defendants guilty beyond a reasonable doubt, you may only consider the evidence introduced or lack of evidence.

A 8216

THE GOVERNMENT MUST PROVE EACH ELEMENT OF EACH CRIME CHARGED BEYOND A REASONABLE DOUBT

Request No. 12

The defendants are charged with two separate types of crimes. I will presently define those crimes for you.

However, each of those crimes is composed of a number of separate and distinct elements. Each element of each crime charged must be proved by the prosecution beyond a reasonable doubt. If the prosecution fails to prove beyond a reasonable doubt any one element of a crime charged, you must acquit the defendants of that crime, even if you were to be persuaded of every other element.

THE INDICTMENT

Request No. 13

In essence, the indictment in this case charges that from 1961 up to and including July, 1976 the defendants engaged in a scheme and artifice to defraud, mislead, and cheat persons in connection with the sale and purchase of land at Rio Rancho Estates in New Mexico. The indictment alleges that this scheme to mislead and cheat violated certain federal laws, to wit, 18 U.S.C. §1341, commonly known as the Federal Mail Fraud Statute, and 15 U.S.C. §1703(a), commonly known as the Interstate Land Sales Act.

In order to convict any one of the defendants on trial, it is the prosecution's burden to convince you beyond a reasonable doubt, as I have defined that to you, that the defendants or any one of them did in fact engage in a criminal fraud as alleged in the indictment. In the instructions which follow, I will describe to you what are commonly called the "elements" of criminal conduct which the prosecution must establish in order to warrant a guilty verdict with regard to any of these defendants.

ELEMENTS OF MAIL FRAUD

Request No. 14

The indictment in this case charges Chester Carity, Howard Friedman, Henry Hoffman, Daniel Friedman, AMREP Corporation, Rio Rancho Estates, Inc. and ATC Realty with mail fraud. You must acquit the defendants of mail fraud unless you find that the prosecution has proved all the following elements beyond a reasonable doubt.

First. That the defendants devised a scheme to defraud.

Second. That, for the purpose of executing or attempting to execute the scheme to defraud and in furtherance of the scheme to defraud:

(a) the defendants mailed the particular item alleged in each count, or,

(b) the defendants knowingly caused to be mailed the particular item alleged in each count, and

Third. And most important, that there was a specific intent to defraud on the part of the defendants, that is, that they knowingly, willfully and intentionally did a wrongful and wicked act. United States v. Interstate Engineering Corp., 288 F. Supp. 402, 412 (D.N.H. 1967) (Wyzanski, C.J.), aff'd, 400 F. 2d 58 (1st Cir. 1968), cert. denied, 393 U.S. 1036 (1969); Title 18, U.S.C. §1341.

The indictment in this case alleges, and the prosecution contends, that the alleged scheme to defraud was carried out by means of false and fraudulent misrepresentations. A scheme to defraud by means of false and fraudulent misrepresentations can only be established as to any particular defendant by proof beyond a reasonable doubt that that particular defendant had actual knowledge of the falsity of misrepresentations made.

With respect to the corporations involved, you may only find those corporations guilty of the crime of mail fraud if all of the elements, as I have defined them for you, are established beyond a reasonable doubt as to an authorized corporate officer or representative.

A person is an authorized corporate representative only if you find under all the circumstances of the case that his position in the corporation was such that he had the authority to bind the corporation with respect to the matters alleged in the indictment. In short, not every agent or employee of a corporation has the authority to bind the corporation, but only those officers whose position is such that they are in a control status with respect to the corporation. Employees and agents of the corporation who are not in such a control position can only bind the corporation when they are specifically authorized to act with respect to the matters in issue.

Id. at 412.

In determining whether any particular corporate agent or employee had the authority to bind any of the corporate defendants you must consider whether he acted in accordance with corporate policy as you understand it to be from all of the evidence.

SCHEME TO DEFRAUD

Request No. 1

The prosecution must first establish beyond a reasonable doubt that between 1961 and 1976, as charged in the indictment, these defendants, or some of them, engaged in a pattern of conduct with regard to the sale and purchase of land at Rio Rancho Estates which constituted a scheme to defraud and cheat purchasers of Rio Rancho land.

To establish such a scheme, the prosecution must prove a plan and pattern with respect to the defendants' allegedly criminal conduct. *United States v. Nance*, 502 F. 2d 615 (8th Cir. 1974), *cert. denied*, 420 U.S. 926 (1975); *Fabian v. United States*, 358 F. 2d 187, 193 (8th Cir.) *cert. denied*, 385 U.S. 821 (1966); *United States v. Ross*, 321 F. 2d 61, 68 (2d Cir.) *cert. denied*, 375 U.S. 894 (1963). Even proof of isolated and diverse misrepresentations is not sufficient to constitute the single scheme to defraud which the indictment alleges. *Bliss v. United States*, 354 F 2d 456, 457 (8th Cir. 1966) (Blackman, J.); *McLendon v. United States*, F. 2d 660, 661 (6th Cir. 1924); *Dyhre v. Hudspeth*, 106 F. 2d 286, 288 (10th Cir. 1939). Absent convincing evidence of a continuing, consistent course of fraudulent conduct, it is your duty to acquit these defendants.

A scheme to defraud is not established by showing that the individual and corporate defendants were engaged in a common business activity, in this case, the selling of land to the public. All legitimate businesses have common patterns of business conduct. Such patterns are not sufficient to make out the scheme which mail fraud requires.

The prosecution must prove beyond a reasonable doubt that the pattern of defendants' business conduct was illegal and fraudulent as charged in the indictment. In order to constitute a scheme to defraud, the conduct in question must be shown to have possessed a consistent, continuing and inherent capacity and design to mislead, deceive, and injure those members of the public to whom the land was offered. If, considering the conduct in question, as a whole, that conduct lacked this capacity and design to mislead and deceive, then no scheme is proved and an acquittal must follow. *United States v. Interstate Engineering Corp.*; 288 F. Supp. 402, 421 (D.N.H. 1967), *aff'd.* 400 F. 2d 58 (1st Cir. 1968), *cert. denied*, 393 U.S. 1036 (1969).

SCHEME OR PLAN

Request No. 16

The prosecution charges that virtually every aspect of the defendants' business conduct constituted a part of a scheme and artifice to defraud and was designed to mislead, deceive, injure, and cheat purchasers of Rio Rancho land.

For example, the prosecution charges that the actual development which has taken place at Rio Rancho was fraudulently designed in fact as a device to induce others to purchase land at Rio Rancho Estates.

The prosecution charges also that the right to cancel a purchase within six months after visiting the property was likewise a fraudulent device designed to attract people to the land at Rio Rancho in order to encourage purchasers to buy additional land.

The prosecution further charges that the dinner parties at which land was sold were designed to mislead and deceive potential purchasers by various means. The prosecution charges, for example, that purchasers were not given time to read and understand the conditions of their purchase agreements, were deprived of or persuaded to minimize or ignore the significance of various State authorized Property Reports and Offering Statements, and were victimized by carefully synchronized presentations of information through podium speeches and movies.

A 8224

Further, the prosecution charges that the defendants made various representations with regard to Rio Rancho Estates which were materially false, and which were fraudulently designed to mislead and deceive potential purchasers into purchasing Rio Rancho land.

I instruct you in this last regard that not every statement or even misrepresentation in connection with the sale of a product is sufficient to make out the crime of mail fraud. As a matter of law, enthusiastically puffing or exaggerating the merits of whatever is being sold is recognized as a traditional part of selling. Mere puffing and exaggeration however enthusiastic it may be and other aspects of competitive salesmanship do not constitute criminal fraud.

This also is true with regard to promises, predictions, and erroneous conjecture as to future events, especially where those prophecies relate to prospective potential profits. Scott v. United States, 263 F. 2d 398 (5th Cir. 1959); United States v. Regent Office Supply Corp. 421 F. 2d 1174 (2nd Cir. 1970).

Before a representation may form the predicate for a finding of criminal fraud, it must be of such a nature and importance as to deceive the person to whom it is directed as to the essential quality of what is received.

The question of falsity is complicated to some extent in this case by the fact that the alleged misrepresentations upon which the prosecution principally relies, *i.e.*, that Albuquerque would grow to the northwest and that Rio Rancho land was a good investment, are statements of opinion. A statement of opinion is different from a statement of existing fact. A statement of fact is a statement that is verifiably true or false at the time it is made. For example, "today is Tuesday" or "this car is red". A statement of opinion is a statement the truth of which may depend upon and relate to future events or occurrences not exclusively within the control of the declarant. It is a prediction. *Scott v. United States*, 263 F.2d 398 (5th Cir. 1959); *United States v. Farmer*, 218 F. 929, 923 (S.D. N.Y. 1914).

Now, with respect to the statements contained in the defendants' literature which you find are statements of opinion, such as the statement that Albuquerque would grow to the northwest, and that Rio Rancho land was a good investment, before you reach the question of knowledge and intent, you must first be convinced that the opinion was wrong or false. In deciding whether a statement of opinion is wrong or false, you should consider whether or not there was a reasonable basis for such opinion, and whether or not that opinion was honestly held by persons other than the defendants. If you find that there was any rational basis for disagreement as to a matter which you find to be a matter of opinion, such an opinion may not properly form the basis for a conviction in this case. Reilly v. Pincus, 338 U.S. 269, 276 (1949) and American School of Healing v. McAnnulty, 187 U.S. 94 (1902). In short, if you find any rational disagreement as to the direction of growth of Albuquerque and the quality of Rio Rancho land as an investment, then the prosecution has failed to prove the falsity of these representations as a requisite element of its case.

NECESSITY OF MISREPRESENTATION

Request No. 17

In order for you to find that the defendants devised and intended to devise a scheme to defraud its customers, you must find beyond a reasonable doubt in addition to a specific intent to defraud, that the defendants actually made false statements or representations to its customers.

Parr v. United States, 363 U.S. 370, 291-92 (1960); Durland v. United States, 161 U.S. 306, 313 (1895); United States v. Regent Office Supply Co., Inc., supra, 421 F. 2d 1174, 1182; United States v. Baren, 305 F. 2d 527 (2d Cir. 1962); United States v. Brown, 79 F. 2d 321, 325 (2d Cir. 1935), cert. den., 296 U.S. 650 (1935); United States v. Callahan, supra, 72 Cr. 1126.

A 8228

SCHEME OR PLAN MUST BE CALCULATED OR DESIGNED TO DEFRAUD IN ORDER TO BE CRIMINAL

Request No. 18

A fundamental question you must answer in your deliberations is whether the overall conduct of the defendants' business was in fact a plan or scheme calculated and designed to defraud. In determining whether a plan is designed to defraud the kinds of people to whom it is addressed, you must take into account the range of persons to whom the land was offered. In the circumstances of this case, you may not consider the most foolish or the least restrained or the most gullible of our population. In this case the proof establishes, and I do not believe there is a dispute about it, that the land offered for sale was offered primarily at dinner parties. The evidence further establishes, and I do not believe it is disputed, that the invitations to those dinner parties were sent out on the basis of mailing lists which were designed to reach individuals in a particular middle income group.

There has been no showing that the defendants attempted to sell their land to the unsophisticated, the foolish, or the gullible, or to persons below average in intelligence. Indeed, you may find that the persons who purchased Rio Rancho land and who testified as prosecution and defense witnesses represented a fairly wide range o educational and social backgrounds. Most of them, you may find, were highly sophisticated individuals and none of them appeared to be lacking in ordinary intelligence. You may consider that range of educational and social backgrounds and sophistication as a circumstnce in deciding whether under all the facts in the case the conduct of the defendants' business was designed or calculated by the defendants to defraud the individuals to whom it was directed.

Another relevant circumstance in deciding the issue of whether the conduct alleged had the requisite design to defraud is the fact that some individuals testified that they were not misled or deceived as to their land purchases. The fact that some purchasers do not even claim to have been defrauded is a relevant circumstance on the issue of whether the conduct in question was designed or calculated to defraud. Indeed, if you find that those who claimed to have been cheated constituted a small percentage of those who purchased, you may, if you choose, regard that factor as proof that the conduct in question did not have that capacity, to wit, was not designed to defraud. United States v. Interstate Engineering Corp., supra, at 418; United States v. Baren, 305 F. 2d 527, 533 (2d Cir. 1962).

The issue of whether the conduct of defendants' business was designed to defraud has special significance where a largely publicly owned corporation engaged in largescale business operations is charged with mail fraud. There is always the possibility in such situations that the defendants involved might be the subject of criminal prosecution merely become some "few disgruntled purchasers" are unhappy while the vast majority of purchasers have no complaints. United States v. Andreadis, 366 F. 2d 423, 431 (2d Cir. 1966), cert. denied, 385 U.S. 1001 (1967); United States v. Baren, 305 F. 2d 527, 533 (2d Cir. 1962).

The defendants contend that the conduct proved in this case could not and was not designed to defraud. They point to the facts that each purchaser of land at Rio Rancho got exactly what he bargained for, i.e., undeveloped land without utilities; that each purchaser had the right to inspect the property purchased and the right to cancel within six months of purchase if he were not satisfied for any reason with the land purchased; that each purchaser had a right to exchange his undeveloped land into a building lot in the developed area in the event the utilities had not reached his land when he desired to build; that each purchaser was possessed of all sufficient facts upon which he could make his own judgment as to the investment potential of the land; and that each purchaser could easily verify and ascertain value by the exercise of simple independent diligence and inquiry. The defendants further contend that other factors negate the likelihood that their conduct was designed or calculated to defraud those to whom it was directed. They point to the policy of distributing property reports; the ability of purchasers to rescind under applicable government regulations for periods ranging from forty-eight hours up to three days from the date of purchase; and the growing and developing community at Rio Rancho.

You may consider all of these circumstances in resolving the question of whether or not the conduct in question was designed to defraud which a scheme to defraud requires. Lustiger v. United States, 386 F. 2d 132, 138 (9th Cir. 1967), cert. denied, 390 U.S. 951 (1968); Rude v. United States, 74 F. 2d 673 (10th Cir. 1935); United States v. Rabinowitz, 327 F. 2d 62 (6th Cir. 1964).

The prosecution claims on the other hand that the conduct alleged was calculated and designed to and in fact did defraud. They refer to the testimony of its purchaser witnesses to support that conclusion. Whether the conduct in question had that requisite capacity is for you and you alone to decide. Unless you find beyond a reasonable doubt that the defendants' mode of doing business was designed to defraud, you must, without further deliberation, acquit each defendant of the crimes charged.

A 8232

CUSTOMER GETS WHAT HE BARGAINED FOR

Request No. 19

Among the defense contentions is that every customer who purchased land got exactly what he expected and at the price he expected to pay. If you find from all the evidence that the prosecutor has failed to prove beyond a reasonable doubt that purchasers of land did not get exactly what they had reason to expect and at the price they expected to pay, then you must find that the prosecution has failed to establish an existence of a fraud and you must acquit.

United States v. Regent Office Supply Co., 421 F. 2d 1174, 1180 (2d Cir. 1970).

Request No. 19a

On the issue of whether the customers got exactly what it is they bargained for and at a price they expected to pay, you may consider the contractual terms and representations contained within the purchase contract as well as the various required offering statements, property reports, and advertising literature.

MEMBERSHIP

Request No. 20

The prosecution must also establish individual participation in any scheme to defraud, assuming you are convinced beyond a reasonable doubt that there was such a scheme as charged.

In determining whether or not a defendant or any other person participated in a scheme to defraud, you are not to consider what others may have said or done, unless and until you find that the particular defendant was a participant in the scheme. That is to say the membership and participation of a defendant or any other person in a scheme to defraud must and can only be established by evidence as to that defendant's individual conduct, what he himself said or did, and the connection that those acts bear to the acts of other defendants.

In other words, in considering whether or not a particular defendant participated in a scheme to defraud, you must do so without regard to and independent of the acts or statements of other people. You must determine the issue of participation of a particular defendant in the scheme to defraud only from any evidence as to that defendant's own statements, conduct, or acts. You may also consider the relationship that those acts and statements have to the conduct of other parties you find to be members of the alleged scheme. United States v. Interstate Engineering Corp., supra, 288 F. Supp. at 436.

In this regard, and in connection with the statements which the prosecution alleges were false and misleading, the government must prove beyond a reasonable doubt that a defendant had actual knowledge (a) that the statement was made, and (b) that the statement was false and fraudulent and intended to mislead and deceive.

In deciding whether a defendant had such actual knowledge, you are to consider whether he personally knew about it and not whether some salesman or other agent or employee of the corporation acting on his own behalf knew about it or whether some co-defendant or associate knew about it. In a criminal case, whatever may be the rules of agency in civil matters, a defendant is to be judged only on the basis of his own personalized individual knowledge. In short, the knowledge which the crime charged requires is not satisfied by constructive knowledge or knowledge which is imputed based upon the knowledge of someone else. United States v. Interstate Engineering Corp., 288 F. Supp. 402, 412 (D.N.H. 1967), aff'd, 400 F. 2d 58 (1st Cir. 1968), cert. denied, 393 U.S. 1036 (1969).

Some of the defendants occupied executive positions in the various corporations named as defendants. You may not find an individual defendant criminally liable merely because he is an officer in a corporation. As a matter of law, a corporate officer is not responsible for the acts of his corporation performed on the corporation's behalf by other corporate officers and employees. You must find that he actually and personally performed the act which constitutes the offense charged or that the act was done at his direction or with his permission. Consequently, you may not convict any individual defendant of the offenses alleged unless you are satisifed that the prosecution has proved beyond a reasonable doubt that each and every element of the scheme alleged was participated in and executed by the defendant himself or was with his knowledge or under his direction or with his permission. United States v. Finnigan, 564 F. 2d 1355, 1357 n. 3 (8th Cir. 1974).

As I have indicated, knowledge is something which very infrequently can be established by direct proof. Very often it must be inferred from all the surrounding circumstances of the case. It may be proved by a defendant's conduct since we have no way of looking into a person's mind directly. Now, in this connection, bear in mind that one may not wilfully and intentionally take steps to remain ignorant of a fact, important and material to his conduct, in order to escape the consequences of criminal law. If you find from all the evidence beyond a reasonable doubt that a defendant knew of representations and believed that the representations were false or at the very least was aware of a high degree of probability that they were false and therefore deliberately tried to avoid learning that they were false in order to be able to say he did not know, you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

In other words, you may find the defendant acted knowingly if you find either that he actually knew the representations made were false or that he deliberately closed his eyes to what he had every reason to believe was the fact. I should like to emphasize however that the requisite knowledge cannot be established by demonstrating merely negligence or gross negligence or even foolishness on the part of a defendant. United States v. Joly, 493 F. 2d 672, 674 (2d Cir. 1974).

Furthermore, you can find wilfull blindness only where it can almost be said that a defendant actually knew. In short, he suspected the fact, he realized its probability, and he refrained from obtaining the final confirmation because he wanted to be able to deny knowledge. This and this alone is wilfull blindness. Any wider definition would make the doctrine of wilfullness indistinguishable from civil negligence. G. Williams, Criminal Law, The General Part, §67 at 159 (2d Ed. 1961), as quoted in United States v. Jewel, 532 F. 2d 697, 700 n. 7 (9th Cir.), (en banc), cert. denied, ____ U.S. ____, 96 S. Ct. 3173 (1976). The prosecution must prove, beyond a reasonable doubt, that if the defendant was not actually aware . . . his ignorance in that regard was solely and entirely a result of . . . a conscious purpose to avoid learning the truth. United States v. Jewel, 532 F. 2d 697, 704 (9th Cir.) (en banc), cert. denied, ____ U.S. ____, 96 S. Ct. 3173 (1976).

A 8238

SPECIFIC INTENT TO DEFRAUD

Request No. 21

The prosecution also most prove intent to defraud. Like every other essential element of the offenses charged, it must be proven beyond a reasonable doubt. Fraudulent intent is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of fraudulent intent. Good faith constitutes a complete and total defense to an offense where fraudulent intent is an essential element, such as the offenses charged here. One who acts with honest intention is not chargeable with fraudulent intent. One who expresses an opinion honestly entertained is not chargeable with fraudulent intent even though such opinion is erroneous and such belief is a mistaken belief. Evidence which establishes a mistake in judgment or an error in management or even carelessness does not establish fraudulent intent. In order to establish fraudulent intent on the part of a person, it must be established that such persons knowingly and intentionally attempted to deceive another. *United States v. Ammons*, 464 F. 2d 414, 417 (8th Cir.), *cert denied*, 409 U.S. 988 (1972).

Request No. 22

Intent to defraud, as I have said, means the specific intent to deceive, cheat and trick someone. But an intent to deceive, before being considered the specific intent which satisfies the statute, must be coupled with what may be best described as an "evil ambition" to deprive someone of something of value, and to cause pecuniary harm.

In other words for the defendants to be guilty of Mail Fraud, the prosecution must have proven beyond a reasonable doubt that they intended to deceive their customers incident to some particular "evil ambition" to deprive them of something of value and to cause them pecuniary harm. Otherwise, the defendants must be acquitted of all charges.

United States v. Regent Office Supply Co., Inc., 421 F. 2d 1174 (2d Cir. 1970); *United States v. Sheiner*, 273 F. Supp. 977 (S.D.N.Y. 1967), *aff'd,* 410 F. 2d 337 (2d Cir. 1969), *cert. den.*, 396 U.S. 825 (1969); *United States v. Reese*, 96 F. Supp. 913 (E.D. Pa. 1951).

A 8240

GOOD FAITH

Request No. 23

The burden of establishing bad faith and fraudulent intent rests upon the prosecution. A defendant is not under any burden to prove his good faith. Rather, it is the prosecution that must establish his bad faith. Sparrow v. United States, 420 F. 2d 826, 829 (10th Cir. 1968). Bad faith is not established merely by the circumstances that some of the persons who purchased from the defendants may or may not have lost money in connection with their purchases. Even if you find that the defendants' conduct, viewed from the benefit of 20-20 hindsight was incorrect or visionary, bad faith is not established unless you are convinced beyond a reasonable doubt that a defendant did not believe what was said. Steiger v. United States, 373 F. 2d 133, 136 (10th Cir. 1967); Hawley v. United States, 133 F. 2d [illegible] 971-72 (10th Cir. 1954).

The prosecution claims, for example, that bad faith is established in connection with the Rio Rancho project by the fact that Rio Rancho is not now fully or substantially developed, and may not be in the near future. There is no evidence that the defendants promised full or even substantial development at any particular time in the future. And common sense tells us that communities do not develop overnight. In short, bad faith and fraudulent intent is not established by the fact that Rio Rancho is not presently a fully or substantially completed development. *Kroll v. United States*, 433 F. 2d 1282, 1290 (5th Cir. 1970), *cert. denied*, 402 U.S. 944 (1971); *Hawley v. United States*, 133 F. 2d 966, 971-972 (10th Cir. 1954).

You may also consider as highly significant on the question of good faith the circumstance that all sales literature utilized by defendants, including brochures, pamphlets, and films were submitted to various state agencies, such as the New York Department of State prior to use and were not used or given to purchasers or prospective purchasers until and unless permitted to do so by those agencies. A good faith attempt to comply with government regulations and to conform sales literature to the requirements of the law is evidence from which it may be inferred that the defendants acted in good faith. Thus, if you find that a defendant in good faith sought to conform his conduct and the company's sales literature to the requirements of state and federal law, you may find that such conduct, when considered with all the other evidence in the case, warrants a finding of not guilty as to that defendant. *United States v. Diamond*, 430 F. 2d 688 (5th Cir. 1970).

Similarly, you may consider on the issue of good faith, evidence of defendants' knowledge that various state agencies, including the New York Department of State, physically inspected Rio Rancho and, unannounced, monitored its dinner parties following submission of dinner party schedules to the State agencies. You may also consider as evidence of the defendants' good faith that they hired a fact verifier to verify the facts in the advertising.

There is also evidence that company policy forbade salesmen misrepresentations and that salesmen who made misrepresentations were to be fired. There also is evidence seven (7) sales managers and a salesman named Luther Schliesser were in fact fired for this reason.

There also is evidence that the defendants honored every contractual promise and, in fact, that every variation from the contractual terms were in favor of the purchaser.

Another circumstance you may properly consider on the question of whether the defendants acted in good faith is that purchasers of Rio Rancho property were given an opportunity to inspect the land and the right to cancel and get a total refund if they did not like it, and that the defendants encouraged such inspection and even underwrote the costs of such inspection visits. Lustiger v. United States, 386 F. 2d 132, 138 (9th Cir. 1967), cert. denied, 390 U.S. 951 (1968); United States v. Rabinowitz, 327 F. 2d 62 (6th Cir. 1964).

You may also consider as evidence of the defendant's good faith the testimony of various purchasers that they were fairly treated and that they were satisfied in all of their dealings with Rio Rancho.

Another circumstance which you may consider as significant on the question of the defendants' good faith is the extent to which and the manner in which Rio Rancho has been developed and is continuing to be developed. You may find that in expending sums of money to develop the property, that the defendants acted in good faith in selling Rio Rancho land.

You may therefore consider all of the evidence of growth at Rio Rancho, including the golf course, the sewage treatment plant, and the manner in which these defendants encouraged industrial development at Rio Rancho through, among other things, donations of land to businesses as evidence of their good faith. You may also consider the fact that the defendants paid at least three professional planners to assist in planning the development.

The prosecution on the other hand contends that Rio Rancho's growth and development was actually a fraudulent inducement designed to increase the sale of land and therefore constituted part of the scheme to defraud. It is, of course, for you and you alone to determine which of these contentions make the most sense to you since that question, as all questions of fact, are for you and you alone to decide.

You may also consider on the issue of good faith the following circumstances: evidence of moratoriums, i.e., gratuitous extensions of time to make payments on the land contracts despite a legal right of the company to forfeit the customer under the terms of the contract; gratuitous refunds made by the company for reasons of hardship; and the evidence of satisfied customers.

You may consider these circumstances, along with the other evidence in the case, and unless you conclude that the prosecution has met its burden of establishing bad faith on the part of a particular defendant, then he must be acquitted of the crime charged.

KNOWLEDGE OF FALSITY

Request No. 24

The prosecution must also establish beyond a reasonable doubt that the defendants wilfully and knowingly made material statements or representations which were false.

Even if you find beyond a reasonable doubt that some statement or representation was in fact false or incorrect, you may not properly infer from that fact alone that the defendants had actual knowledge that the statement was false. Proof of error in a representation or opinion does not establish knowledge of falsity or fraudulent intent. United States v. Caine, 441 F. 2d 454, 457 (2d Cir. 1971); United States v. Taller, 394 F. 2d 435, 438 (2d Cir.), cert. denied, 393 U.S. 839 (1968).

This is especially true where, as here, the principal alleged misrepresentations upon which the prosecution relies are statements of opinion. You may find that a statement of opinion is knowingly false only if you are convinced beyond a reasonable doubt that it was not honestly believed by the defendants or that they knew there was no basis to believe in the truth of what was said. Thus, unless you find an absence of belief in the statement or opinion has been proved, no criminal misrepresentation is established regardless of the correctness or incorrectness of that opinion.

Similarly, unless you are convinced there was no reasonable basis for an opinion, then the fact that that opinion was proved to be wrong is of no consequence in assessing criminal responsibility. United States v. Grayson, 166 F. 2d 863, 866 (2d Cir. 1948).

The prosecution contends that proof of knowledge of falsity and proof that the opinion as to Albuquerque's future growth were not honestly held is established by the so-called Avellanet Report. That report, of course, may be considered only as to those defendants whom the prosecution has shown had actual knowledge of the contents of that report. The same is true as to any other documents which the prosecution relies upon to establish knowledge. Phillips v. United States, 356 F. 2d 297, 306 (9th Cir. 1965), cert. denied sub nom., Walker v. United States, 384 U.S. 952 (1966). The defendants contend that the Avellanet Report was a superficial and entirely unreliable study based entirely upon secondary sources and that accordingly, it was not worthy of being relied upon.

The defendants further contend that many reputable and knowledgeable persons in Albuquerque were projecting during the 1960s and 1970s, and continue to project that Albuquerque's future growth would have to be to the northwest. Some of those persons, to wit, Jose Luis Yguado and Jack Graham, testified at this trial.

Unless you are convinced that the defendants had no rational basis for a belief that Albuquerque would grow to the northwest, then you may not find that that defendant` knew that their statements with respect to Albuquerque's future growth were false and you must acquit them of the charges in this case insofar as those charges are predicated on that statement of opinion. In that circumstance, neither falsity nor knowledge of falsity nor intent to defraud may be properly inferred with respect to statements that defendants may have made as to the future growth of Albuquerque.

A 8248

Request No. 25

Any false representations made by a defendant must have been known by him to be false. A good faith belief in the truth of statements made is a complete defense to the charges of fraudulent misrepresentations.

Kroll v. United States, 433 F. 2d 1282, 1290 (5th Cir. 1970) cert. denied, 402 U.S. 944 (1971).

Request No. 26

You may consider evidence that defendants used advertising material only after it was submitted to and reviewed by State agencies and that defendants believed that such review constituted approval of the representations made in the advertising as negativing the existence of defendants' knowledge of falsity or intent to defraud.

United States v. Pennsylvania Industrial Chemical Corp., 411 U.S. 655 (1973); Cox v. Louisiana, 379 U.S. 559 (1965); Raley v. Ohio, 360 U.S. 423 (1959); United States v. AMREP, 75 Cr. 1023 (CMM), June 30, 1976, p. 3 (memorandum denying defendant Howard W. Friedman and Henry Hoffman motions to dismiss the indictment).

Request No. 27

Evidence that defendants had knowledge that inspectors from the State of New York made inspections at Rio Rancho, attended dinner parties without prior announcements and made or requested changes to be made in advertising are all circumstances which you should consider in determining whether defendants believed that the review of advertising material by the state agencies constituted a determination by those agencies of the unlawfulness of the representations made in the advertising.

UNAUTHORIZED REPRESENTATIONS BY SALESMEN

Request No. 28

Unauthorized representations by salesmen cannot support the prosecution's charge against the defendants of criminal fraud. *Barrett v. United States*, 33 F. 2d 115, 116 (8th Cir. 1929); *United States v. Corlin*, 44 F. Sup. 940, 947-948 (Southern District of California, 1942).

Thus, unless you find beyond a reasonable doubt that the defendants authorized a salesman to make a particular representation you believe to be false, if any, you may not consider such a representation in your determination of the defendants' guilt or innocence.

SALESMANSHIP

Request No. 29

There has been some evidence in this case from some purchasers, which testimony has been disputed by other purchasers, that sales dinners were conducted in a "high pressure" atmosphere. There has also been some proof that salesmen were trained in various sales techniques to induce sales in an emotional atmosphere. The defendants claim that there is no merit to the contention that high pressure tactics were used as evidenced by the circumstance that there was a sales ratio of approximately one sale per dinner over the years in question.

However, even if you find that high pressure sales techniques were used, high pressure sales techniques, puffing, and the employment of commonly used selling devices to induce sales, such as the assumptive close, is not fraud. *United States v. Baren*, 305 F. 2d 527, 533-34 (2d Cir. 1962); *Scott v. United States*, 263 F. 2d 398, 401 n. 2 (5th Cir. 1959).

As I have told you, mere exaggeration and puffing is not fraud. You may find from your common experience that to some extent salesmanship and the use of selling techniques is part of the fabric of our American way of life. Even if you personally disagree with techniques and find some of them offensive, you must put aside your own personal preferences in that regard and decide this case solely on the evidence.

In short, you may not convict any defendant in this case merely because you disapprove of particular sales tactics.

PRICE OF LAND IS NOT EVIDENCE OF FRAUD

Request No. 30

The indictment alleges and the prosecution contends that sales of land were at prices in excess of what Rio Rancho paid for the land. However, I instruct you that even if Rio Rancho was selling land in excess of its initial cost, that circumstance is not evidence of fraud. You are not to be concerned with what it cost Rio Rancho to purchase the land as compared with the prices at which it was offered for sale. For one thing, the price of a product includes more than the cost of raw material, and properly includes costs such as development, advertising, and overhead.

It is not a fraud for a seller to set the sale price for his product at a price which generates a profit. United States v. Interstate Engineering Corp., 288 F. Supp 402, 412 (D.N.H. 1967), aff'd, 400 F. 2d 58 (1st Cir. 1968), cert. denied, 393 U.S. 1036 (1969).

REPRESENTATION OF GOOD INVESTMENT

Request No. 31

The absence of an immediate ready resale market does not prove that Rio Rancho was a bad investment.

The prosecution claims that the defendants defrauded purchasers of Rio Rancho land by representing that that land was a good investment, when as the prosecution claims it was not a good investment. The prosecution's only evidence of falsity on this issue was its proof that there may not have been an immediate resale market in Albuquerque, as evidenced by the circumstance that some Rio Rancho land holders were not able to sell their property through a multiple listing service in Albuquerque. The statement that Rio Rancho land is a good investment, like the statement that Albuquerque would grow to the Northwest, is a statement of opinion and therefore all of the considerations which I have described in dealing with such statements apply here.

I further instruct you that real estate is not by its nature a liquid investment and that illiquidity or lack of a ready resale market does not in and of itself establish that the land sold was a bad investment. The evidence shows that the land was sold as a long range investment and therefore the lack of a ready resale market, even if you find such to have been proved, does not establish the falsity of the defendants' representations. Furthermore, since the

the statements as to value were opinions, you may not find them to be false if you find that the evidence demonstrates a reasonable basis for differing viewpoints on the issue of value. You may find that what is a good investment may mean many things including things other than ultimate profit, such as a decent place to live and work. The defendants of course have put in testimony establishing value and have elicited testimony that some individuals sold their land at a profit. Indeed two or three of the government witnesses gave similar testimony.

THE GOVERNMENT'S FAILURE TO CALL LAND APPRAISER

Request No. 32

The prosecution has contended that the sale of Rio Rancho land as a good investment consitituted a fraud upon the purchasers. The burden is therefore upon the prosecution to establish that a purchase of Rio Rancho land was a bad investment. The government's proof with respect to Rio Rancho's investment value was largely that there was a limited resale market in Albuquerque between 1971 and 1973 as evidenced by the inability of certain purchasers to sell their land through the use of a multiple listing service in Albuquerque. The prosecution did not call any expert witness who would testify to the value of Rio Rancho land. Since it is the prosecution's burden to establish bad investment, you may consider the prosecution's failure to call such a witness as a factor in deciding whether or not it has carried its burden of proof on that issue. United States v. Miranda, 526 F. 2d 1319, 1331 (2d Cir. 1975).

REQUIREMENT OF MAILING

Request No. 33

As I have previously instructed you, the prosecution must also prove beyond a reasonable doubt that with respect to each count, the item alleged to have been mailed was mailed in furtherance of and for the purpose of executing a scheme to defraud. In addition, the prosecution must prove that the defendants mailed or caused to be mailed the item alleged in each count.

Request No. 34

Accordingly, for each item allegedly mailed, you must determine the extent of the contribution, if any, the mailing of the item made to the success of the scheme and artifice to defraud. In other words, you must determine whether the use of the mails was an integral part of the scheme, and necessary to execute it.

If the prosecution fails to prove beyond a reasonable doubt that the mailing of the particular item alleged in each mail fraud count was for the purpose of executing the scheme to defraud and not a mere tangential or incidental use of the mails, you must acquit the defendants of mail fraud.

United States v. Maze, 414 U.S. 395 (1974); Parr v. United States, 363 U.S. 370 (1960); Kann v. United States, 323 U.S. 88, 94 (1944); United States v. Chason, 451 F. 2d 301 (2d Cir. 1971), cert. den, 405 U.S. 1016 (1972).

A 8260

Request No. 35

Evidence, even if believed, that a particular letter was received by mail or that a particular letter is postmarked, does not establish that the defendants mailed it or caused it to be mailed.

United States v. Baker, 50 F. 2d 122 (2d Cir. 1931); Freeman v. United States, 20 F. 2d 748, 750 (3d Cir. 1927).

INTERSTATE LAND SALES ACT

Request No. 36

The last five counts of the indictment charge the defendants with violation of the Interstate Land Sales Act, Title 15 U.S.C. §1703(a) 2(A) and (C). That statute provides as follows:

* * *

In order to convict any defendant of violating this section the prosecution must prove beyond a reasonable doubt, each and every one of the following essential elements:

1. At the time set forth in the indictment the particular defendant you are considering was a developer or represented or acted on behalf of a developer in connection with the sale or offer to sell subdivided lots;

2. That in selling or offering the lots for sale the defendant engaged in a scheme to defraud;

3. That the defendant acted with the specific intent to defraud; and

4. That in furtherance of the scheme to defraud, means or instruments of interstate commerce or communication were used.

In connection with the first 20 counts I have already defined for you a scheme to defraud and specific intent to defraud.

A 8262

In determining whether the prosecution has met its burden of proof under this statute and these last five counts, you may only consider evidence of conduct after May 1, 1969 since that is the date the statute took effect.

SEC FILINGS

Request No. 37

The prosecution has introduced evidence of statements made by AMREP to the Securities and Exchange Commission in connection with the various requirements of the federal securities laws. In considering the weight to be attached to these statements, you should consider, and I so instruct you, that filings with the Securities and Exchange Commission are made for various and diverse reasons unrelated to the actual business of selling and developing land in New Mexico.

AIDING AND ABETTING

Request No. 38

The defendants have also been charged as aiders and abettors.

Before you may find any defendant guilty of aiding and abetting the commission of a crime, however, the prosecution must prove beyond a reasonable doubt that such defendant aided, abetted, counseled, or caused the particular crime to be committed with the specific intent that every element of the crime be done by someone.

To aid and abet in the commission of a crime, it is necessary that the person intentionally associate himself with the crime and participate in it seeking and intending to cause every element of the crime to happen.

You must draw a distinction here between acts and intent. A person can act through another, but he can only be guilty of an offense if he himself has the specific intent to cause every element of the crime to occur. Thus, even if you find that the prosecution has proved beyond a reasonable doubt that there was a scheme to defraud, you must acquit the defendants unless you also find that the prosecution has proved beyond a reasonable doubt that each defendant intended to cause every element of the crime to be committed.

United States v. Bertolotti, 529 F. 2d 149 (2d Cir. 1975); United States v. Falcone, 109 F. 2d 579, 581

(2d Cir.), affirmed, 311 U.S. 205 (1940); United States v. Peoni, 100 F. 2d 401 (2d Cir. 1938); United States v. Greer, 467 F. 2d 1064 (7th Cir. 1972), cert. denied, 410 U.S. 929 (1973).

A 8266

CHARACTER EVIDENCE

Request No. 39

There was testimony here of the good character and reputation of the defendants. You should consider such character evidence together with all the other facts and evidence in determining each defendant's guilt or innocence. Evidence of good character may create a reasonable doubt here where without such evidence no reasonable doubt would have existed. But your determination of whether the government has carried its burden of proving beyond a reasonable doubt the offenses charged should be based on all of the evidence in the case.

Adapted from Judge Connor's charge in United States v. Chu, 76 Cr. 439 (S.D.N.Y. 1976), Stenographer's Trial Minutes, p. 1350.

COMMON COUNSEL

Request No. 40

You have noticed throughout this trial that certain defendants are represented by the same counsel. That circumstance does not mean that you are to regard the defendants as being one person. Each defendant is entitled to your separate consideration even if represented by common counsel. The question of innocence or guilt is personal and must be decided by you as to each defendant individually and the factor or circumstance that two defendants may be represented by one counsel should be disregarded in making that determination. You have also noticed throughout the trial that counsel for various defendants have consulted with each other and have divided the work of the trial in an effort to facilitate their presentation and to avoid duplication. The fact that defense counsel have consulted and cooperated with each other in the conduct of their defense is not to be considered by you as any indication that each defendant's innocence or guilt is to be determined on a group basis. As I have told you, innocence or guilt is personal and you must make a separate determination as to each defendant's innocence or guilt and you are therefore to disregard entirely in making that judgment the circumstance that counsel for various defendants have worked together during the trial. Indeed, especially in a case of this length, it would be unusual if counsel did not share the burdens of the defense.

A 8268

INDIVIDUAL DUTY OF JURORS

Request No. 41

As a juror you have a duty to determine the innocence or guilt of the defendants based on your own recollections and understanding of the evidence in this case. You should listen to the views of your fellow jurors just as you should make your views known to them. Yet you would be doing a disservice to your oath as a juror, and indeed, to this Court and the system of justice if you let your own individual judgments be overborne by your fellow jurors for the sake of expediency or because your views may represent a minority view.

In short, your judgment in this case should not represent a compromise of your own individual good faith belief in the defendants' guilt or innocence on the charges.

PERMISSIBILITY OF DIFFERENT VERDICTS

Request No. 42

There are seven defendants on trial in this case. Each defendant is entitled to the same presumption of innocence and to be accorded the same considerations as if each one were on trial separately.

All the defendants are charged together in this case with the same crimes. You would be performing a disservice to our system of justice and a grave injustice to these defendants to infer anything at all against them from the mere fact that they are charged together and are being tried together. Each is entitled to separate consideration, and the fact that the prosecution has chosen, for whatever reasons of economy or convenience there may be, to charge them together should not serve to prejudice them. If anything, the duty of the jury is to avoid lumping the defendants together and to seek, with all the intellectual powers at your disposal, to treat these defendants as if each were tried alone without the others. This is very important in this case because a very fundamental issue is whether or not each defendant had the intent to commit the crimes alleged.

Thus, you must give separate personal consideration to each defendant and to the evidence or lack of evidence against him. Each defendant is entitled to have his case determined from evidence of his own acts, statements, and conduct. You may find all the defendants innocent or all of them guilty, if the evidence against each one individually would warrant that decision. Or, you may return different verdicts as to different defendants.

The point is that you must not let your decision with respect to any defendant influence your decision with respect to the others.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

UNITED STATES OF AMERICA :

- v - : S 76 Cr. 644 (CMM)

AMREP CORPORATION, :
RIO RANCHO ESTATES, INC.,
ATC REALTY CORP., :
HOWARD W. FRIEDMAN,
CHESTER CARITY, :
HENRY L. HOFFMAN,
and DANIEL FRIEDMAN, :

Defendants. :

- x

GOVERNMENT'S REQUESTS TO CHARGE

The government respectfully requests the Court to include in its charge to the jury, the following:

REQUEST NO. 1

General Principles

We have now reached the point in this trial when you are about to enter upon your final function as jurors, which is, of course, one of the sacred duties of citizenship. You have given careful attention to the evidence during the course of the trial and I am certain that you will conduct your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

You have sat patiently since last November 3, and have listened to about 60 witnesses testify on behalf of the government and the defendants. The typewritten record of their testimony covers nearly 7,000 pages. You have witnessed the lawyers for both sides examine and cross examine witnesses, jump up with many objections and request innumerable side bar conferences. That is their job, indeed their duty and responsibility. Nothing that the lawyers have said or done during this trial constitutes evidence to be considered by you. We are at the point where you and you alone take over the proceedings.

In our court system the functions of the judge and the functions of the jury are clearly defined. It is my duty to instruct you as to what the law is and it is your duty to accept the law as I state it to you.

General Principles

Just as I am the exclusive judge of the law, so you are the exclusive judges of the facts. You alone determine the credibility of the witnesses, and the weight, effect and value which should be given to the testimony. It is up to you to determine from the evidence you have heard what the facts are in this case, and from those facts decide whether a defendant has violated the law.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the government or the defense may have said with respect to matters in evidence during the trial, in questions, in colloquy with the Court, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the Court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection. At various times

General Principles

during the trial, so-called side-bar conference were held out of your hearing. They related to matters of law which do not concern you, and so these conferences or their purposes may not enter into your deliberations. I have sought to avoid any comments which might suggest that I have personal views on the evidence or that I have any opinion as to the guilt or innocence of any of the defendants, and you are not to assume that I have any such views or opinions. This charge is given to you solely to instruct you as to the law applicable to this case. The actions of the judge during a trial in granting or denying motions or ruling on objections by counsel, or in statements to counsel, or in attempting to clearly set forth the law in these instructions, are not to be taken by you as any indication of any determination of the issues of fact.

These matters, the actions of the Court, relate to procedure and law. You, the members of the jury, determine the facts. The case must be decided by you upon the sworn testimony of the witnesses, any stipulations entered into among counsel and such exhibits as were received in

REQUEST NO. 1 (Continued)

General Principles

evidence.

Charge of Judge Metzner, United States v. Mendlinger, 75 Cr. 956 (Tr. 2871, 2878-79).

This is a criminal prosecution in which the government is one party and the defendants are the others. The fact that the government is a party entitles it to no greater, and likewise, to no lesser consideration than any other party. It is entitled to the same consideration as given to the defendants, no more and no less.

This case must be decided within the scope of the charges against each defendant as contained in the indictment, but before discussing the law applicable to the charges of the indictment, let us consider some general principles which apply to every criminal case.

An indictment itself is not evidence. It merely describes the charges made against a defendant and may not be considered by you as evidence of the guilt of a defendant. Nor can the fact that a grand jury has returned this indictment

General Principles

in any way detract from the presumption of innocence with which the law surrounds a defendant, unless and until his guilt is proved beyond a reasonable doubt.

Each of the 2~~6~~5 counts which you will consider alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each of the defendants separately on each of the 2~~6~~5 counts of the indictment.

You must consider and weigh the evidence separately as to each defendant in each count. The fact that you may find all or some of the defendants guilty or not guilty of one of the offenses charged should not control or influence your verdict with respect to any other offense of which the defendant is charged, or to a charge against any other defendant.

REQUEST NO. 2

Burden of Proof and Reasonable Doubt

Each defendant has denied the charges in the indictment. By their pleas of not guilty, each defendant has put into issue every material fact alleged in the accusations brought against them. Accordingly, the government, having made the charge, has the burden of proving beyond a reasonable doubt each material element of each count of the indictment. This rule applies to each defendant individually as to each of the charges in the indictment in which he is named. This burden of proof never shifts. It remains with the government during the entire trial and during your deliberations as jurors.

A defendant does not have to prove his innocence. He is presumed to be innocent, and this presumption is overcome only when you reach a conclusion from the evidence that his guilt has been established beyond a reasonable doubt.

What is meant by a reasonable doubt? The words almost define themselves; that there is a doubt founded in reason, and arising out of the evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after weighing all the evidence. It means a doubt that is substantial and not merely shadowy.

REQUEST NO. 2 (Continued)

Burden of Proof and Reasonable Doubt

A reasonable doubt is one which appeals to your reason, your judgment, your common sense, and your experience. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can, candidly and honestly, say that you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of a defendant's guilt, then you have a reasonable doubt and in that circumstance, it is your duty to acquit.

On the other hand, if after such a fair and impartial consideration of all the evidence you can, candidly and honestly, say that you are satisfied of the guilt of the defendant, that you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt, and in that circumstance, it is your duty to convict.

Putting it more plainly, if you are confronted with an important decision, and after reviewing all the factors that are pertinent, you are beset by doubt and uncertainty, are unsure of your judgment, and feel that you have reason to hesitate, then you have a reasonable doubt.

REQUEST NO. 2 (Continued)

Burden of Proof and Reasonable Doubt

Beyond a reasonable doubt does not mean to a positive or mathematical certainty or beyond all possible doubt. If that were the rule, few men, however guilty they might be, would be convicted. It is practically impossible for a person to be absolutely and completely convinced of a controverted fact, which by its nature, is not susceptible of mathematical certainty. In consequence, the law in a criminal case is such that it is sufficient if the guilt of a defendant is established byond a reasonable doubt, not beyond all possible doubt.

From the charge of Judge Weinfeld in Kahaner, supra, pp. 766a-67a.

See United States v. Nuccio, 373 F. 2d 168, (2d Cir. 1967).

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REQUEST NO. 3

The Indictment and Statutes

The indictment in this case charges the defendants with violations of the mail fraud statute and the anti-fraud provisions of the Interstate Land Sales Full Disclosure Act, which I will hereinafter refer to as the Land Sales Act. You will have a copy of the indictment to take with you into the jury room during your deliberations.

The mail fraud statute reads as follows:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon . . . any such matter or thing, . . . [commits a crime]."

The defendants are charged in 20 counts with violating that mail fraud statute. The indictment reads as follows:

> [The Government request that the Court read the mail fraud section of the Indictment].

In order to convict each defendant on any of the mail fraud counts, you must find beyond a reasonable doubt the following three elements:

REQUEST NO. 3 (Continued)

The Indictment and Statutes

1. That the defendant whom you are considering devised or intended to devise a scheme or artifice to defraud or to obtain money by false and fraudulent pretenses, representations or promises;

2. That, pursuant to such scheme, the defendant used the mails or caused them to be used to send items from or into the Southern District of New York; I charge you as a matter of law that the Southern District of New York includes Manhattan and the Bronx;

3. That the defendant acted wilfully and knowingly.

I will define these elements of the crime of mail fraud more fully for you in a little while.

The anti-fraud provision of the Land Sales Act reads in pertinent part as follows:

> "(a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transporation or communication in interstate commerce, or of the mails --
>
> * * *
>
> (2) in selling or leasing, or offering to sell or lease, any lot in a subdivision-
>
> (A) to employ any device, scheme, or artifice to defraud, or
>
> * * *
>
> (C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser."

REQUEST NO. 3 (Continued)

The Indictment and Statutes

The defendants are charged in six counts with violating the Land Sales Act. This statute was enacted in order to prevent abuses and deceptive practices, including high-pressure and fraudulent sales techniques, in interstate sales of land.

> United States v. Goldberg, 527 F.2d 165, 167 (2d Cir. 1975); see Schenker v. United States, 529 F.2d 96 (9th Cir. 1976) (Act modeled after securities legislation).

The indictment reads as follows:

> [The Government requests that the Court read The Land Sales Act portion of the Indictment].

In order to convict each defendant of violations of the Land Sales Act arising out of the sale of land at Rio Rancho Estates, you must find beyond a reasonable doubt the following five elements:

1. That the defendant is a developer or agent within the meaning of the statute;

2. That Rio Rancho Estates is a subdivision within the meaning of the statute;

3. That the defendant employed a device, scheme or artifice to defraud in connection with the sale of lots at Rio Rancho Estates, or engaged in a practice or course of business which operated as a fraud or deceit upon a purchaser;

The Indictment and Statutes

4. That the defendant did so willfully and knowingly; and

5. That the defendant used a means or instrument of communication in interstate commerce pursuant to the scheme or course of business.

I will go into the details of these elements a little later.

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REQUEST NO. 4

Multiple Defendant - Multiple Count Case

As I stated the indictment in this case contains 26 counts. Each count charges a separate crime. They must each be considered separately.

The indictment names seven defendants, in all, four individuals and three corporations. They are the only persons whose guilt or innocence you must announce in your verdict, although, as I will explain to you shortly, in considering their guilt or innocence, you may have to determine the nature of the participation, if any, of the others. In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of a defendant on trial before you must be determined separately with respect to him solely on the evidence presented against him or the lack of evidence. The case of each defendant stands or falls upon the proof or lack of proof of the charge against him, and not against somebody else.

From the charge of the Honorable
Charles H. Tenney in *United States*
v. Maxwell, 383 F.2d 437 (2nd Cir.
1967) (at pp. 1635-6 of the trial
transcript.)

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REQUEST NO. 5

Mail Fraud - First Element

The first element of the offense charged in the mail fraud counts is the existence of a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations, or promises. The language describing this first element is almost self-explanatory.

A "scheme or artifice" is merely a plan for the accomplishment of an object.

"Fraud" is a generic term which embraces all the many and varied means which human ingenuity can devise and which are resorted to by one or more individuals to gain an advantage over another by false representation, suggestion or by suppression of the truth. "To defraud" means to cheat or to deprive someone of something of value by trick or deceit.

Thus, a "scheme to defraud" is merely a plan to obtain something of value by trick or deceit.

Charge of Judge Metzner, United States v. Mendlinger, 75 Cr. 956 (Tr. 2858). See, Fasulo v. United States, 272 U.S. 620 (1926); Hormon v. United States, 116 Fed. 350 (6th Cir. 1902); 37 C.J.S., Fraud § 1, p. 204.

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When statements are made to others, they may be literally true but misleading if material facts are concealed; half-truths and misleading statements pursuant to a scheme or artifice to defraud violate the mail fraud statute. (Decision of Judge Metzner, dated June 30, 1976).

In determining whether a statement is false or whether there was an omission to state facts which would make stated facts not misleading, you must also find that they involved material facts. A material fact is one to which an average. reasonably prudent person would attach importance in deciding whether or not to act.

> Charge of Judge Metzner, United States v. Mendlinger, 75 Cr. 956 (Tr. 2858).

The Government alleges that it was a part of the scheme that the defendants would make or cause to be made one or more of the allegedly false or misleading representations which are set forth in the indictment. I instruct you that it is not necessary that the Government prove that all of the representations charged in the indictment are false or misleading. It is sufficient if the Government proves beyond a reasonable doubt that at least one false or misleading representation was made in furtherance of the scheme to defraud.

REQUEST NO. 5 (Continued)

Mail Fraud - First Element

From the charge of the Honorable Edward Weinfeld in United States v. Della Rocca, 72 Cr. 217 (pp. 20-21 of July 27, 1972 transcript).

The Government's contentions as to the Scheme to defraud.

In this case, boiled down to its simplest terms, the government claims that the scheme to defraud was the sale to the public of lots at Rio Rancho Estate as a safe and secure financial investment which lots could be resold at substantial profits, whereas in truth and in fact there was virtually no resale market for these lots and they were not a safe and secure financial investment. The government claims that the scheme was carried out, in large part, at the dinner parties to which prospective customers were invited, where the prospective customers would be exposed to the standard Rio Rancho sales presentation. The government alleges that its proof has shown that the sales presentation

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focused primarily on Rio Rancho land as being a safe financial investment: that it was a way to make a lot of [illegible]ey. (GX 317, pp. 5, 6; GX 671); and that purchasers could expect to make up to 25% per year or more on an investment in Rio Rancho lots. (Eg. GX 316, p. 19; GX 384, p. 9; GX 388, p. 9). The sales presentation favorably compared an investment in Rio Rancho lots to other types of investments such as stocks, mutual funds, savings accounts and life insurance. The Government further contends that one of the main reasons given as to why Rio Rancho land was such a good investment which could be resold at a profit was that Albuquerque was "bursting at the seams", was hemmed in on three sides, and could only grow to the northwest, to and through Rio Rancho Estates. These claims concerning Albuquerque "bursting at the seams" with the only available direction of Albuquerque's growth being to and through Rio Rancho were continuously made from at least 1965 through 1974.

It is the government's position that these representations were false and misleading. The government relies primarily on the testimony of the following witnesses to support its contention of the falsity of these representations: Albert Pierce, the executive director of the Council of Governments; Kenneth Neiswander, the chief underwriter from the FHA; Raymond Seay, the current Mountain Bell forecast

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supervisor; Richard Musgrove, the former Mountain Bell forecast supervisor; Ralph Avellanet, the author of the Harmon, O'Donnell & Henninger report commissioned by Amrep; Darlene McCorkle, the former Rio Rancho employee; and George Carruthers, the director of the Albuquerque Planning Department. These witnesses testified that there was growth in all quadrants of Albuquerque and Bernalillo County but that since 1965 most of the growth had taken place in the Northeast quadrant and that the direction of growth to the Northeast was continuing. The government points to the Planning Department's study in 1964, called the 1985 Land Use Plan, which was in Amrep's possession, which stated that (GX. 60):

> "There are large areas of vacant land in every quadrant of the city, with most of it potentially developable for urban use. There is sufficient developable vacant land within the study area [the green outline on the photo mosaic, GX 1075a] to accommodate a population of more than 2 million." (p. 24).

It also stated:

> "Albuquerque has an abundance of vacant land available for urban development. Even the most optimistic growth projections would not utilize this land within the current century." (p. 32).

* * *

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> The West Side, including the South Valley will start to develop extensively. Because of the lack of present development, the West Side can be expected to become the fastest growing area of the city on a percentage basis, although the Northeast Heights will continue to have the most absolute growth. (p. 3).
>
> * * *
>
> The projected population of 825,000 for the study area was distributed to the four quadrants, then to the districts.
>
> * * *
>
> Most of the districts were found to have more capacity than there were people that could be expected to fill them. (p. 39).

The government also points to Mr. Carruthers' testimony concerning the Planning Department's latest study, done in 1975, when Mr. Carruthers stated that using density figures prevalent for the last twenty years, there was sufficient land to accommodate approximately 1.1 million people in the Albuquerque metropolitan area, which did not include Rio Rancho Estates. (Tr. 4427-4437).

Moreover, the Government contends that it has shown that Albuquerque's growth to the west and northwest is possible without any necessarily beneficial effects to Rio Rancho. Moreover, the 1966 report by Harmon, O'Donnell and Henninger specifically advised that:

> "Despite the expected doubling of Albuquerque's population over the next 20 years to over 600,000 residents, ample undeveloped suburban land exists more proximate to the City and its desirable parts than Rio Rancho's land, such that only a small and selective local market penetration by Rio Rancho is likely over the 20-year period from 1966 to 1985". (GE 66, p. 40)

The Government claims that it has demonstrated the availability for development of a vast amount of land on the west side which is closer to Albuquerque than Rio Rancho, and capable of handling increased growth. For example, the Government points to the testimony of Mr. Pierce who testified that in the Northwest quadrant the Atrisco Land Grant is available for development because the legal constraints were resolved between 1968 and 1972 and that the Atrisco land comprises about 48 square miles (Tr. 4245-4246). Moreover, both Mr. Pierce and Mr. Carruthers testified that the City is now extending utilities into the area of the Atrisco Land Grant. (Pierce Tr. 4267; 4125; Carruthers Tr. 4617; see also DX EL; "Guidelines for Public Systems for area west of Rio Grande.") Moreover, Mr. Pierce testified that in addition to the 48 square miles of the Atrisco land, there is between 30 to 35 square miles north of the Atrisco land still within the Northwest quadrant of Bernalillo County which has a high potential for development and which is below the escarpment (Tr. 4300-4301).

The Government also points to the testimony of Albert Pierce, George Carruthers and the defendants' witness Mr. Graham all of whom testified that it was not true that in 1965 and 1966 Albuquerque could only grow to the Northwest (Pierce Tr. 4221; Carruthers Tr. 4357-58; Graham Tr. 6350). Moreover, Richard Musgrove testified that he would not say Albuquerque was only growing to the Northwest and that Albuquerque could fit another Albuquerque within its 1965 borders. Indeed, in a filing with the Securities and Exchange Commission in 1962 AMREP admitted that "The Company does not, of course, know what growth, if any, Albuquerque will experience in the future or if any such growth will benefit the Company". (GX 400B.) Finally, no witness including Mr. Yguado desputed that the Northeast experienced the most absolute growth in the last 15 years, and that there was still land available today in the northeast

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for residential development.

The Government submits that it has proved that the defendants' statements to prospective purhcasers from 1965 to 1974 that Albuquerque was "bursting at the seams" and could only grow to and through Rio Rancho were false and misleading in 1965 and are false and misleading today.

The Government also contends that the sale of Rio Rancho land as a safe and secure financial investment which could be resold at substantial profit (GX 315, p. 14; GX 384, p. 9; GX 388, p. 9) was false and misleading because, as the defendants knew, there was no resale market for the land and given the availability of land in and closer to the City of Albuquerque to accommodate any anticipated growth of Albuquerque, there was no reason to believe that there would be a resale market for this land.

Moreover, there has been testimony that customers who purchased in the late 1960's and early 1970's were told that Rio Rancho was almost sold out, that once it was sold out and the company was no longer in competition with the purchasers, the purchasers would be able to resell their land and that AMREP and Rio Rancho would set up a resale

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program. The Government contends that the proof has established that when the 55,000 acres was almost sold out, the defendants, instead of setting up a resale program, purchased an additional 37,000 acres of land beginning in 1969 to January of 1971, which expanded Rio Rancho from 55,000 acres to 92,000 acres, thus further assuring that purchasers of Rio Rancho land would not be able to resell their land.

The Government claims that in its SEC filings, Amrep admitted that "purchasers buy with a view to profiting from possible increase in the value of the land" (GX 410, p. 8 (1968); GX 402, p. 19 (1972) and yet the company repeatedly recognized the lack of a resale market (GX 409A, p. 9, for example):

> "AMREP believes that its customers find it difficult to resell homesites while AMREP is actively selling homesites in the same development."

Moreover, the same time the defendants were representing to new purchasers that Albuquerque was "bursting at the seams"; that there was a great demand for land, and that residential land was scarce. Amrep and Rio Rancho were sending letters to their former customers who inquired about resale that it was too soon for a local resale market. (GX 149h; 158e;

1310(c)). Thus the Government contends that the defendants were well aware that purchasers were buying to resell and that there was no resale market. The lack of resale market was also established through the testimony of Ronald Williams from the Multiple Listing Service of the Albuquerque Board of Realtors, of which Rio Rancho, and Double R Realty, a wholly owned subsidiary of Amrep were members, by the testimony of Peter Olquin, the auctioneer, and by purchasers who testified as to their efforts to sell their land through realtors in Albuquerque. For example, Mrs. Greenberg testified she sent a letter to 75 realtors in Albuquerque and was unable to list and resell her land.

Additionally, the government claims that the fraudulent scheme is shown by the defendants' limited development plan for Rio Rancho Estates. The defendants only expected about 5% of the Rio Rancho purchasers to move to the property based upon Amrep's experience with Rainbow Lakes Estates, (GX 66, p. 34) and did not set aside sufficient land to permit each lot to be exchanged for a lot with utilities. (GX 885; 93). Moreover, the defendants were aware that there was no demand from the local Albuquerque market for homes at Rio Rancho (GX 66; 657). In 14 years, less than 5% of Rio Rancho has been developed (GX 1075A) and Amrep's own projections were for 350-400 homes per year

(GX 963). Since there were 86,000 lots for sale nationally at Rio Rancho, the government contends that it would take about 200 years to fully develop Rio Rancho. The Government claims that the impression created at the sales dinner was entirely different: prospective customers were led to believe that development was rapidly taking place and that development would soon be getting to each individual's land holdings. The government submits that if purchasers had known that Rio Rancho would not be developed in their lifetime (and probably much longer than that), the prospect of Rio Rancho as a financial investment which could be resold at a profit would certainly have diminished, and the prospective buyer's decision would have been materially affected.

The government claims that this aspect of the fraud is most vividly demonstrated by people who purchased commercial lots. These lots were sold without the exchange right. The value of the commercial lots was therefore totally dependent upon development reaching the location of the lot, since a commercial lot would need access to utilities in order to build and proximity to people in order for a commercial establishment to survive. The government contends that it would have been material for the people buying commercial property in, say Unit 25, such as Dr. Reyes-Guerra and Mr. Morden, to know that development could not be expected to reach the location of their commercial lots in their lifetime.

REQUEST NO. 5 (Continued)

Mail Fraud - First Element

The government also contends that the sales dinner itself belies the fact that Rio Rancho was a safe financial investment. The Government claims that you have heard testimony and seen evidence that it was necessary to create a sense of urgency and enthusiasm in the room in order to sell the land, (Mandel, Tr. 777; Zaknich, Tr. 1089; Bondy, Tr. 1272-73; GX 531 and 991), and that this was why "holds" were called, and why "sale and deletion" calls, both accurate and inaccurate, were used, to create that atmosphere of urgency. As Perlmutter testified, Dan Friedman said "mass psychology" was needed. (Tr. 3166). The Government contends that the dinner was a well-coordinated, fully-planned sales effort. As Sidney Hollander told a meeting of sales people at a motivation and training session (GX 669):

> These people who come to our party as versus you against the Green Bay Packers. We serve them with an organized offense against a disorganized defense. We could kill them. We could walk all over them, and we do."

The Government contends that if Rio Rancho were in fact a better investment that stocks, mutual funds, saving accounts and life insurance, it would not be necessary to utilize such techniques in order to effectuate sales of Rio Rancho land. Moreover, if Rio Rancho was indeed the only place where the City of Albuquerque could grow the Government contends it would not have been necessary for Amrep to sell this land to persons living outside of New Mexico at these sales dinners.

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REQUEST NO. 5 (Continued)

Mail Fraud - First Element

I have just summarized the government's basic contentions of what the scheme to defraud was. I repeat, this is what the government claims; it is up to you to determine if a scheme to defraud did, in fact, exist, and whether each defendant was a participant in that scheme, if you find that one did exist.

Defendant's Contentions with respect to the scheme to defraud

[The defendants' contention should be given at this point].

I will now give you certain legal instructions concerning this element of mail fraud.

A scheme to defraud is clearly made out if you find that actual, material misrepresentations were made in the sale of Rio Rancho land. Moreover, a scheme to defraud can also exist even in the absence of an absolute misstatement as to a single fact, if the promotional material and sales presentation when considered in its entirely can be found to have been intentionally designed to mislead those exposed to it. [Adapted from the charge of the Honorable Edward Weinfeld in United States v. Della Rocca, 72 Cr. 217, p. 19 of transcript of charge on July 27, 1972;

See also, McCarthy v. United States, 187 Fed. 117, 118 (2 Cir. 1911); Durland v. United States, 161 U.S. 306, 313-14 (1896).

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> Donaldson v. Read, 333 U.S. 178, 188 (1948); Lustiger v. United States, 386 F.2d 132, 138 (9th Cir.), cert. denied, 390 U.S. 951 (1968); Cates v. Haderlein, 189 F.2d 369, 373 (7th Cir.), rev'd. on other grounds, 342 U.S. 804 (1951).

The deceitful concealment of material facts or deceitful half-truths can constitute an actual fraud, and the devising of a scheme for obtaining money by such half-truths or concealments is in violation of the statute. Della Rocca, supra.

The government does not have to prove that every word of the sales presentation, if gramatically analyzed, is false.

> Linden v. United States, 254 F.2d 560, 568 (4th Cir. 1958); Silverman v. United States, 213 F.2d 405 (5th Cir.), cert. denied, 348 U.S. 828 (1954).

You can take into account that the buying public attending the Rio Rancho dinners and hearing and seeing the sales presentation did not and are not expected to have carefully weighed or studied each word and sentence they heard or read; you can take into account that the ultimate impression upon the mind of a person attending a sales dinner arises not only from what is said but all of that which is reasonably implied.

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> Aronberg v. FTC, 132 F.2d 165, 167 (7th Cir. 1942); see also, Charles of the Ritz Dist. Corp. v. FTC, 143 F.2d 676, 679 (2d Cir. 1944); Gusow v. United States, 347 F.2d 755, 756 (10th Cir. 1965); Colburn v. United States, 223 Fed. 590, 595 (8th Cir.), cert. denied, 239 U.S. 643 (1915); United States v. Sheiner, 273 F. Supp. 977, 983 (S.D.N.Y. 1967), aff'd, 410 F.2d 337 (2d Cir.), cert. denied, 396 U.S. 825 (1969); Gottlieb v. Schaffer, 141 F. Supp. 7. 17 (S.D.N.Y. 1956, Weinfeld, J.).

In short, questions of fraud may be determined in the light of the effect that the entire presentation would produce on ordinary minds. [Donaldson v. Read, supra, 333 U.S. at 189; Wiser v. Lawler, 189 U.S. 260, 264 (1903).] The fact that a sophisticated purchaser would not be misled does not bar a finding of fraud; the laws are made to protect the trusting as well as the suspicious. Donaldson v. Read, supra, 333 U.S. at 189; Gottlieb v. Schaffer, supra, 141 F. Supp. at 17; FTC v. Standard Education Society, 302 U.S. 112, 116 (1937).*

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* While some of the cases cited involved civil fraud, it is well settled that the criteria of fraud evolved in civil cases are applicable to prosecutions under the mail fraud statute. Foshay v. United States, 68 F.2d 205, 210-11 (8th Cir. 1933), cert. denied, 291 U.S. 674 (1934); United States v. Rowe, 56 F.2d 747, 749 (2d Cir.), cert. denied, 286 U.S. 554 (1932); United States v. Hannigan, 303 F. Supp 750, 754 (D. Conn. 1969).

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REQUEST NO. 6

Mail Fraud -- Second Element

If you find the existence of the first element of mail fraud, that is the existence of a scheme to defraud, you then move on to the second element. The second element of the offense is what we call the jurisdictional element. Congress has provided in the mail fraud statute that a scheme to defraud is a federal offense if the defendant, in any way, directly or indirectly, used the mails or caused someone to do so in connection with such scheme, or aided and abetted another person who in any way, directly or indirectly, used the mails or caused someone to do so in connection with such scheme.

Here the government contends that it has offered proof of a mailing with respect to each of the customers who were called as witnesses, and who are each identified with one of the 20 mail fraud counts you will consider. Eighteen of the alleged mailings were payments by that customer to the Chemical Bank in Manhattan. Two of the mailings were letters from Rio Rancho Estates and ATC Realty to the particular customer.

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Mail Fraud -- Second Element

> United States v. Weisman, 83 F.2d 470, 473-74 (2d Cir.), cert. denied, 299 U.S. 560 (1936). See, United States v. Wolfson, 405 F.2d 779, 783-84 (2d Cir. 1968), cert. denied, 394 U.S. 946 (1969); United States v. H. Vaughan Clarke & Co., 134 F.2d 875, 877-78 (2d Cir. 1943).

It is not necessary for the government to prove that a defendant actually received or placed in the mail any of the payments or letters. It is sufficient for the government to prove that a defendant caused the mailing to be made in the ordinary course of business, provided that you find that the mailing was made in furtherance of the scheme.

Thus, if a defendant knew or could have reasonably foreseen that his actions would naturally and probably result in the use of the mails, then he has caused the mails to be used.

> From charge of Judge Metzner in United States v. Mendlinger, 75 Cr. 956 (Tr. 2860).

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REQUEST NO. 7

Mail Fraud - Third Element

The third element that the Government must prove beyond a reasonable doubt is that each defendant wilfully and knowingly devised, or became a party to, the allegedly fraudulent scheme.

The word "knowingly" means that the defendant acted purposely and deliberately.

"Wilfully" means intentionally, with a bad purpose to do that which the law forbids. In other words, in order to convict on the mail fraud counts, you must find that the defendant purposely did the acts with which he is charged and did not act carelessly or negligently or through inadvertent error or mistake or something of that nature.

Let me elaborate. The government must establish beyond a reasonable doubt that the defendant whom you are considering knew that the representations made at the sales dinners and tours and in the various promotional documents and correspondence concerning Rio Rancho and its value as a safe, secure and profitable financial investment were false or misleading. Medical science as yet has devised no instrument by which you can go back and determine what purpose was in one's mind when he performed certain acts.

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Mail Fraud - Third Element

Rarely is direct proof available that one had knowledge of a fact or intended to bring about a result. Now and then a person may commit himself in writing or make a statement in which he concedes that as of a certain time he had knowledge of fact and that he acted with specific intent to achieve a specific result. But of course, that is rare, and is the exception rather than the rule.

The intent with which an act is done is often more clearly and conclusively shown by the act itself or by a series of acts than by words or explanations of the act long after its occurrence. Frequently, the acts of individuals speak their intentions more clearly than do their words.

One may apply the old adage, "Actions speak louder than words."

Accordingly, intent, willfullness and knowledge may be established by surrounding facts and circumstances as of the time acts occurred or events took place and the reasonable inferences to be drawn therefrom. This is referred to as circumstantial evidence and if believed, it is as acceptable as direct evidence.

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REQUEST NO. 7 (Continued)

Mail Fraud - Third Element

Guilty knowledge cannot be established by demonstrating inadvertence, carelessness, negligence, or other innocent reasons on the part of the defendant. This applies wherever in this charge reference is made to knowledge and willfullness. However, it is not necessary that the government prove to a certainty that a defendant who you are considering knew any given fact or facts.

The element of knowledge may be satisfied by proof that a defendant acted with deliberate disregard of what the truth was. One may not deliberately close his eyes to what otherwise would have been obvious to him or to facts that would certainly be observed or ascertained in the course of his duties.

> [This charge on knowledge and intent was just approved by the Second Circuit on January 6, 1977, in United States v. Hanlon, Dkt. No. 76-1340. The Government has merely substitute "deliberate" for "reckless" to follow the Court of Appeals' direction.] See also Judge Tyler's charge affirmed in United States v. Natelli, 527 F.2d 311 (2d Cir. 1975).

You may also ask yourselves did a defendant, because of his experience and his knowledge, and because of his position and responsibility in the corporations, act in deliberate disregard of whether or not a given set of facts were false?

Mail Fraud - Third Element

If you conclude that he did, you may, if you wish, infer that he had knowledge of the false nature of such facts.

"[O]ne who makes representations, not knowing whether they be true or false cannot be regarded as innocent, for a positive assertion of fact is by plain implication an assertion of knowledge concerning the fact asserted . . . [A] statement of a fact of which the narrator is ignorant may be equivalent . . . to a statement of that which he knows to be false . . . [W]hile there is no allowable inference of knowledge from the mere fact of falsity, there are many cases where from the actor's special situation and continuity of conduct an inference that he did know the untruth of what he said or wrote may be drawn . . ."

> Bentel v. United States, 13 F.2d 327, 329 (2d Cir.), cert. denied, 273 U.S. 713 (1926) (emphasis in original); United States v. Benjamin, 328 F.2d 854, 861-3 (2d Cir. 1964), cert. denied, 377 U.S. 953 (1964); United States v. Llanes, 374 F.2d 712, 716 (2d Cir. 1967); Elbel v. United States, 364 F.2d 127, 134 (10th Cir. 1966), cert. denied, 385 U.S. 1014 (1967); United States v. White, 124 F.2d 181 (2d Cir. 1941).

However, regardless of how false, misleading or deceptive the sales presentation may have been, if you

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Mail Fraud - Third Element

find that it was so, the execution of that sales presentation does not constitute a crime if it was devised in good faith. Honesty and good faith on the part of a defendant is always a defense to the charge of mail fraud. An honest belief in the truth of the representations is a defense, however inaccurate the statements may turn out to be.

A defendant has no burden of proof, and so here none of the defendants must establish his good faith. The burden is on the government to prove fraudulent intent and by that token to prove a consequent lack of good faith beyond a reasonable doubt.

Now, in considering whether or not a defendant acted in good faith, I instruct you that a belief by any defendant, if there was such a belief, that everything would work out so that no one would lose any money is not an excuse or defense to the crimes charged in the indictment.

Charge of Judge Lasker, United States v. Feinberg (Tr. 2440).

REQUEST NO. 7 (Continued)

Mail Fraud - Third Element

If a statement is made with intent to deceive, it is no defense that the defendants hoped or optimistically expected that the statement would at some time prove to be true.

> Judge Wyatt's charge in United States v. Kuscher, 7 Cr. (p. 14 of transcript of charge).

For example, the Government contends that the defendants from 1965 onwards, made or caused to be made the representation that Albuquerque was surrounded on three sides, was "bursting at the seams", and could only grow in one direction, to the northwest, to and through Rio Rancho Estates. If you find that such representation was false or misleading and made with the intent to deceive the prospective customers hearing it to induce them to believe that such situation existed at that time or in the near future in Albuquerque, then it would be no defense that the defendants hoped or optimistically expected that such situation would eventually come true some time in the distant future.

No amount of belief by a defendant that a venture will ultimately succeed and nobody will suffer, excuses knowing and wilful fraudulent actions by him or

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Mail Fraud - Third Element

knowing and wilful false or misleading representations made in order to induce people to invest in that venture, which fraudulent actions expose or may expose others to the danger of reliance and resulting losses.

> United States v. Diamond, 430 F.2d 688, 692 (5th Cir. 1970); United States v. Pointer, 314 F.2d 939, 943 (4th Cir. 1963); Forshay v. United States, 68 F.2d 205, 210 (8th Cir.), cert. denied, 291 U.S. 674 (1934); Pandolfo v. United States, 286 F.2d 8 (7th Cir. 1922), cert. denied, 261 U.S. 621 (1923).

Furthermore, it is not an element of the crime that a victim of the fraud should have suffered pecuniary loss.

> Charge of Judge Lasker, United States v. Feinberg, (Tr. 2440).

So to sum up on this subject, in order to sustain the charges against these defendants the government must establish beyond a reasonable doubt that the defendant knew that his conduct as a participant in this alleged scheme was calculated to deceive investors in Rio Rancho and that he nonetheless participated in that conduct, that he associated himself with the alleged fraudulent scheme.

REQUEST NO. 7 (Continued)

Mail Fraud - Third Element

Adapted from the charges in *United States v. Gentile*, F.2d (2d Cir. 1976); *United States v. Joyce*, F.2d (2d Cir. 1976); *United States v. Simon*, 425 F.2d 796 (2d Cir. 1969), *cert. denied*, 397 U.S. 1006 (1970); *United States v. Lamont*, Palmieri J., 74 Cr. 762, Tr. 2531; *United States v. King*, Frankel J., 75 Cr. 70, Tr. 4540-4542; *United States v. Aadal*, 368 F.2d 962 (2d Cir. 1966), *cert. denied*, 386 U.S. 970 (1967).

REQUEST NO. 8

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Government's Contentions As To The Individual Defendants

In this case, again boiled down to its simplest terms, the government claims that each of the four individual defendants, by virtue of his position with the different companies and because of his activities in connection with the sale of Rio Rancho land to the public, is criminally responsible for the alleged scheme to defraud. I'd like to now summarize for you what the government's contentions are with respect to these four defendants.

Chester Carity

Carity has been Vice-President of Amrep since 1961, and Executive Vice-President since 1968. He has been a director of Amrep since 1961. Carity has also been a Vice-President and director of Rio Rancho Estates, Inc., since 1961, and president and director of ATC Realty since 1963. Carity was involved in Amrep's Rio Rancho project from its inception in 1961, when the initial 55,000 acres were purchased for $178 per acre. (GX-400A). Carity was also involved in the acquisition of the additional 37,000 acres in 1969, 1970 and 1971, at an average price of $180 per acre, (GX 402), of which all but 2500 acres were purchased from the King brothers at an average price of $180 per acre (Ex 732).

Government's Contentions As To
The Individual Defendants

Carity wrote or reviewed all the promotional material used at the sales dinners (GX-475A, 491), and the scripts used by the speakers (GX-315, 316) at the dinners. (Mandel, Tr. 642, 655, 673-4, 694, 697, 701; Perlmutter, 3394-5). Carity reviewed or received other materials such as delinquency letters which touted Rio Rancho as a good investment. (Perlmutter, Tr. 3132-40; GX-604, 1046, 1066), and the procedure manual (Perlmutter, Tr. 3154-5). The manual contained the script of the telephone confirmation call which acknowledged that most people bought for investment. (GX 468). Carity also instructed subordinates when to open additional sales offices (Mandel, Tr. 659); Carity interviewed potential new brokers (Mandel, Tr. 660); Carity attended area directors meetings where he spoke about boosting party attendence (Perlmutter, 3257-3258; Potter, 2291-94); Carity received both oral and written reports on sales activities at the many offices (Mandel, Tr. 665, 675, 684, 745, Zaknich, 1020-21, 1035-7; GX 358-363); Carity himself visited sales offices and attended many dinners parties (Mandel, Tr. 678-9; Zaknich, 1125); Carity listened to tapes of a sales meeting and commented on sales training (Mandel, Tr. 736-37); Carity

Government's Contentions As To The Individual Defendants

listened to a tape of a dinner party (Mandel, Tr. 1059); Carity was involved with the regular price increases (Mandel, Tr. 788; Zaknich, 1102; Perlmutter, 3273, 3278) which were used to persuade customers that the value of Rio Rancho land was continually increasing (GX-128F); Carity was involved in the decision to acquire the additional 37,000 acres between 1969 and 1971 (Mandel, Tr. 790-1; Zaknich, 1106-08; GX-579, 732) at a time when Rio Rancho customers were being told that Rio Rancho was almost sold out at which time resale would become possible; Carity also received reports on the results of the company-sponsored tours to Albuquerque, in terms of solidifications and upgrades (Mandel, Tr. 863; Zaknich, 1118-1119; GX-767), and knew that seminars were conducted to instruct employees on how to conduct these tours so as to maximize profits. (GX 293-296). Carity was also familiar with the VIP Program (Mandel, Tr. 882-4) which was designed to sell additional land for investment to people who already owned Rio Rancho land, as well as other programs such as the homesite program, pre-flight parties, hospitality suite and referral programs (GX-462, 463, 467, 554). Carity also knew that there was a need for a resale program, since he had been told that many people were inquiring about resale and that they had been unable to resell their lots (Mandel, Tr. 895-90; GX-1034, 1035). The company did not set up a resale program, (GX 1034 and 128e.) but instead bought another 37,000 acres to sell. Carity was also involved in the decision to make Corrales Heights the primary exchange area and to encourage people to exchange into that area rather than into the even exchange area despite the fact that an exchange into Corrales Heights would cost customers additional money and also that many people were complaining about the lack of an even exchange alternative. (Zaknich, Tr. 1113-1115; Potter, 2544).

The government contends that Carity knew of the major misrepresentations used in the sale of Rio Rancho land. He knew that the land was sold to the public as a good, safe and secure financial investment, an investment that could only increase in value, an investment that was better than the stock market, mutual funds and savings accounts, an investment that would yield 25% per year or more. The government contends that Carity also knew that there was no resale market for this land, a fact clearly contrary to the claim that Rio Rancho land was a safe, secure and profitable financial investment.

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Government's Contentions As To The Individual Defendants

The government contends that Carity knew of the alleged misrepresentation concerning the affect Albuquerque's growth would have on Rio Rancho. As previously described, one of the main reasons given to prospective customers why Rio Rancho was a good financial investment was that Albuquerque was surrounded on three sides by certain boundaries, that it was "bursting at the seams," and therefore could grow only in one direction, to the northwest, to and through Rio Rancho, thus increasing the value of land at Rio Rancho and resulting in a resale market for this land. In truth and in fact, the government claims, Albuquerque was not "bursting at the seams" and its growth was not predestined to be only to the northwest, had not been in the past, and would not be in the future. Indeed, its future growth was predominantly going to be to the northeast. That was the conclusion of the Albuquerque Planning Department, whose report was in the company's files. (GX 60). That was also the conclusion reached by the firm retained by Amrep, in 1966, Harmon, O'Donnell & Henninger, and whose report was circulated to Carity (GX-984, 985). And that was Amrep's own conclusion in 1962, when it submitted GX-400B, a SEC

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filing signed by Carity which stated that the company did not know how Albuquerque would grow or if its growth would have any beneficial effect on Rio Rancho Estates.

As late as 1973, the company recognized that Albuquerque's growth had had no significant affect on Rio Rancho Estates It was recognized that Rio Rancho's distance from Albuquerque was a negative factor, along with the fact that Rio Rancho homes were more expensive than in Albuquerque. (GX-657). Carity received a copy of this memo.

Lastly, the government claims that it has shown that Carity, and Amrep, had no intention of fully developing Rio Rancho Estates, contrary to the impression given to Rio Rancho customers. As Zaknich testified, each unit only had at most 10% of its acreage designated as core building areas, and as people transferred into those building areas, the lots they exchanged in went back into inventory and were resold (Tr. 1111-12). Indeed, when inventory was tight the company sold undeveloped lots in its designated core areas (GX 917, 919) thus further depleting its reserve of exchange land. Accordingly, there were not nearly enough lots in the core building areas to come anywhere near being able to accommodate more than a small percentage of the people who had bought Rio Rancho land. The compar[illegible] own summaries of its land holdings confirm this (GX 885). The government claims that this shows that full development was never contemplated, anticipated, nor planned for. As Carity himself so accurately pointed out in GX 498, Amrep had no commitments to Rio Rancho Estates.

Dan Friedman

Dan Friedman started with Amrep in 1963 as assistant controller. He became controller in 1965, treasurer in 1968, and in 1971, he became Vice-President of sales. As such he was the individual directly in charge of and responsible for the daily operations of the national sales effort of Rio Rancho land. In additon, Friedman has been a director of Amrep since 1972.

Dan Friedman was involved in the recruiting and hiring of new brokers who ran the sales offices around the country. (Mandel, Tr. 658-62; Perlmutter, 3234, 3247; GX 517). He worked on the Rio Rancho sales manual and reviewed it with new brokers and managers (Mandel, Tr. 686; Zaknich, 983; GX 1200). That manual contained the dinner party script. It also contained a section called General Facts

Government's Contentions As To The Individual Defendants

on Albuquerque, which included the representation that it could only grow to northwest. It also included Amrep's alleged success at Rainbow Lakes Estates, which you have heard described as being about 570 homes on 13,000 lots. The manual also included instructions on the use of financial leverage, and made comparisons with other types of investments. Friedman went to sales dinners and periodically received tapes of dinners from the sales offices (Mandel, Tr. 664, 680-1; Zaknich, 1059; Bondy, 1330; GX 517, 530, 531, 541, 546) and therefore knew exactly how Rio Rancho land was sold to the public. He received periodic reports on sales from the different sales offices, and evaluated performance of those offices (Mandel, Tr. 675-6, 679; Zaknich, 1020, 1037; Perlmutter, 3217, 3221; GX 358-363, 517). He received the Amrep procedure manual and literature book, and he worked on the many forms used in the Rio Rancho sales effort and reviewed them, including the delinquency letters which touted Rio Rancho as a good, valuable, investment (Mandel, Tr. 680; Perlmutter, 3123, 3153-5, 3328). Friedman attended and ran the sales meetings for the regional and area directors, at which meetings all aspects of the Rio Rancho sales effort were described (Mandel, Tr. 774; Lederman, 1839-41; Potter, 2291, 2294; Perlmutter, 3242-43; 3257). Friedman knew that

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Government's Contention As To The Individual Defendants

Rio Rancho land was sold overseas, and was aware of the rider used only overseas (GX 357), which informed overseas customers who were buying land priced at $30,000 or more that Rio Rancho land was not easily resellable and therefore constituted an illiquid investment. (Perlmutter, Tr. 3288, 3293, 3295; GX 539, 681). He was involved in the perodic price increases of Rio Rancho land (Mandel, Tr. 788; Zaknich, 1102; Lederman, 1825; Perlmutter, 3273, 3278-79; 3283; GX 527, 529, 539, 991, 993, 993A), which price increases were used to convince customers that Rio Rancho land was increasing in value and used to induce people to buy land before the price went up (GX 539, 128f). Friedman knew that the dinner parties could only be successful in selling Rio Rancho land if the proper "mass psychology" was created - a sense of urgency had to exist at the dinner party in order to induce the customer to buy that night (Perlmutter, Tr. 3116; GX 531). The need for the "mass psychology" and the feeling of urgency was the reason for the use of the holds, and the reason for the false calls of deletion about which Friedman knew (Zaknich, Tr. 1091) was to make the customers believe that the land was going fast and that it was something that they could not afford to miss out on. He also recognized that the price increases were the most powerful selling tool in creating that sense of urgency. (GX 991).

Dan Friedman received reports on the success of the company-sponsored tours (Zaknich, Tr. 1118-19; GX 767, 768), tours which repeated basically the same pitch which the customers had originally heard at the dinner and which were very successful in solidifying original purchases plus in selling additional land to customers as an investment (GX 768). He also knew that tour seminars were conducted for employees involved in the tour, to standardize the procedure (GX 293, 296). He was familiar with the other types of sales programs used to sell Rio Rancho land - the OPC Program, the VIP Program, the hospitality suite, homesites, and referrals. (Potter, Tr. 2306; GX 517, 536, 544, 567). Friedman also knew of the problem regarding a shortage of inventory in the late 1960's, and the need for additional property to sell to the public (Zaknich, Tr. 1043, 1107), which problem was resolved when the additional 37,000 acres were tacked onto Rio Rancho (GX 579, 732). Friedman was also aware of the change in the exchange provision, from

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"equal size" to "comparable value" (GX 891A), a change which was followed by Amrep's policy of strongly encouraging people to exchange into Corrales Heights, an area which cost the people additional money, of which Friedman was aware (GX 898).

The government contends that Dan Friedman knew that Rio Rancho was sold to the public as good, safe and secure financial investment. The government also contends that he knew that there was no resale market for Rio Rancho land. (See GX 149h; 158e; 645; 652; 655; 1310c; 402; 410; 413; 415). The government claims that the fact that there was no resale market made a purchase of Rio Rancho land a terrible investment, certainly not comparable to, much less better than, an investment in the stock market, mutual funds and savings accounts. And Friedman knew that this situation of no resale market would prevail for quite sometime, given the company's acquisition of the additional 37,000 acres.

The government also contends that Dan Friedman knew that the company had no intention to fully develop the entire property, and therefore Rio Rancho could not be justified as a good investment on that basis. As I previously mentioned, the government points to the fact that there were not enough building lots reserved to accommodate more than a small fraction of Rio Rancho land-owners, and indeed, land in the building areas was sold to the public. (GX 931). Friedman knew that people buying commercial, multi-dwelling, and ranchettes had no exchange privilege (GX 931), and therefore were dependent upon development reaching their land in order for it to have any value at all. Yet, as Friedman knew, no more than 350-400 homes per year were being projected for Rio Rancho Estates (GX 963), which meant that it would take almost 200 years for Rio Rancho to fully develop.

REQUEST NO. 8 (Continued)

Government's Contentions As To The Individual Defendants

HENRY L. HOFFMAN

Defendant Henry Hoffman has been a Vice-President of AMREP from 1961 until 1968 when he became Senior Vice-President and remained so until late 1974. Hoffman has been a director of AMREP from 1961 until at least 1975. He is a major shareholder in AMREP. Hoffman was also a director of ATC from 1963 to 1969 and has been Vice-President and Senior Vice-President of Rio Rancho from 1961 until 1974. He has been a director of Rio Rancho from 1963 until at least 1975.

Hoffman negotiated together with Herman Oberman the original purchase of the 55,000 acres (GX 806). He signed the SEC statements which state that the "unsold land may be considered raw land which is to be improved by the Company only by the construction of roads" (GX 400B p. 13); and that the roads would be built "to the specifications of the County of Sandoval, which do not require that the roads be surfaced." (GX 400B p. 15) and that "the Company does not, of course, know what growth, if any, Albuquerque will experience in the future, or if any such growth will benefit the Company." (GX 400B p. 14)

REQUEST NO. 8 (Continued)

Government's Contentions As To The Individual Defendants

Mr. Hoffman also signed SEC statements in 1968 and thereafter acknowledging that "some purchasers buy with a view to profiting from a possible increase in the value of the land" and that "customers find it difficult to resell homesites while the Company is actively selling homesites in the same development." (GX 410 p. 8; 402 p. 19) Hoffman was involved in discussions with respect to the additional acquisition of 37,000 acres of land (Zachnich Tr. 1043) and knew the price paid for that land (GX 402 p. 13).

Carity-Hoffman Associates was an in-house advertising agency (Perlmutter Tr. 3321-22). Hoffman wrote the advertising (Mandel Tr. 642, 673), and wrote scripts for dinner parties (Mandel Tr. 655). Hoffman was also involved in producing the film "Your Golden Future" which was used at dinner parties (Mandel Tr. 642, 695) and was also involved in making the film "West Side Story". (GX 638) An edited version of the film "West Side Story" was used at dinner parties. The edited version of the West Side Story highlighted Rio Rancho and deleted references to many other subdivisions on the West of Albuquerque within Bernalillo County; and thus the Government contends the edited version

REQUEST NO. 8 (Continued)

Government's Contentions As To The Individual Defendants

presented out of context the statements made by a City Planning Commission in the original film.

Hoffman attended dinner parties (Mandel Tr. 679) and had conversations with Mr. Mandel and Mr. Zachnich with respect to the sales dinners (Mandel Tr. 680-681), the advertising and the films (Mandel Tr. 639, 666; Zachnich Tr. 1129; See also GX 629). In addition, Mr. Hoffman also reviewed delinquency letters sent to customers (GX 630); he was included in decisions on price increases (Zachnich Tr. 1102) and he was consulted on revisions in the purchasers sales contract relating to the right of exchange, among many other things (GX 604). Mr. Hoffman was also consulted and involved in decisions with respect to physical planning at the property, including decisions to release for national sale, lots which had been designated for future core areas but which had not been developed, and thereby further diminishing the number of lots available for exchange.

Finally, Mr. Hoffman received the report by Harmon, O'Donnell and Henninger (GX 66) which restated that AMREP and Rio Rancho only expected 5% of the lot purchasers to relocate and which report also advised that the trend of growth of Albuquerque would continue to be to the Northeast and that there was sufficient land in the Northeast and that there was also land in and closer to the City of Albuquerque than Rio Rancho to take care of the anticipated growth of Albuquerque during the period of 1965 to 1985. The report concluded that only a small and selective local market penetration by Rio Rancho would be likely over that twenty year period, and that that penetration would be for the land east of Highway 528 which was not offered for sale nationally.

In sum, the Government contends that Mr. Hoffman was engaged in every major aspect of the company operation and knew that the sale of land as safe and profitable financial investment which could be resold at a substantial profit based upon statements in advertising, sales scripts, and films that "Albuquerque was bursting at the seams" and that the only direction that Albuquerque could grow was to and through Rio Rancho, thus creating a demand and resale market for this land, were false and misleading.

REQUEST NO. 8 (Continued)

Government's Contentions As To The Individual Defendants

HOWARD FRIEDMAN

Defendant Howard Friedman was Secretary and Controller of AMREP from 1961 until 1966 when he became Treasurer and then in 1968 he became President of AMREP and has continued in that position. Howard Friedman has been a director of AMREP since 1961 and is a major shareholder. Howard Friedman was Secretary of Rio Rancho from 1961 until 1968 when he became President of Rio Rancho and has continued in that position. He has been a director of Rio Rancho since 1961. Howard Friedman has also been Secretary and Treasurer of defendant ATC Realty from 1963 to 1970. He was president of ATC in 1971. Howard Friedman has been a director of ATC since 1963. Mr. Howard Friedman is also the president and director of Double R. Realty, Inc., a wholly owned subsidiary of AMREP, which was a member of the Multiple Listing Service of the Albuquerque Board of Realtors.

Mr. Howard Friedman signed the same S.E.C. statements which I read to you in connection with Mr. Hoffman.

Mr. Howard Friedman also attended dinner parties (Mandel Tr. 663-64; Lederman Tr. 1832-35; Monaco Tr. 2221; Zachnich Tr. 1123; Bondy Tr. 1331). He had discussions

REQUEST NO. 8 (Continued)

Government's Contentions As To
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with Mr. Mandel with respect to mailings for dinner parties (Mandel Tr. 636-37); Howard Friedman was involved in recruiting brokers (Mandel Tr. 660) and visited sales offices up to twenty-five times a year (Mandel Tr. 678). He received reports on sales, on closing rates, on responses to mailings for dinner parties, the average sale price and the cost (GX 358-63; 557, Mandel Tr. 753-54). He had discussions with Mr. Mandel and Mr. Zachnich on shortage of land to sell (Mandel Tr. 791; Zachnich 1042-43) and Mr. Friedman told Zachnich that discussions were under way to buy additional land. Howard Friedman knew that except for approximately 2500 acres, the additional land was purchased from the King Brothers for an average price of $180 per acre (GX 732). Howard Friedman also was involved in marketing approaches in selling Rio Rancho land (GX 567, 468, Permutter Tr. 3284, Mandel Tr. 880) and he discussed the success of the tours with Mr. Zachnich (Tr. 1118-19). He was involved in decisions on price increases (Zachnich Tr. 1102) and was consulted on changes in the purchasers contracts relating to the exchange privilege among other things (GX 604). Howard Friedman signed the agreement with a broker to sell lots overseas (GX 717) and

REQUEST NO. 8 (Continued)

Government's Contentions As To The Individual Defendants

had conversations with Perlmutter on overseas sales (Tr. 3284).

Mr. Friedman signed filings with New York State in 1972 and 1973 representing that the inducement for sales of lots at Rio Rancho was investment (GX 439, 440). Mr. Friedman also signed reports filed with the Office of Interstate Land Sales in June, 1972 stating that 80,000 dwellings were anticipated and as of that date 830 dwellings were occupied (GX. 430). Mr. Friedman received reports on construction (GX 584). The companies own building projections were 350 to 400 houses per year (GX 963). At that rate it would take more than 200 years to have 80,000 dwelling units at Rio Rancho.

Mr. Friedman was involved in planning decisions on the property including selling lots in future core areas when inventory was tight thus further limiting the number of lots available for exchange (GX 918). Finally, Mr. Friedman also received the Harmon, O'Donnell Report which I have already mentioned several times (GX. 66; 985).

The Government also contends that Mr. Friedman was intimately involved in all aspects of the company's operation and had knowledge of the false and misleading statements as to the value of this property as a safe and secure financial investment which could be resold at a substantial profit.

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REQUEST NO. 9

Role of Individual Defendants

It is not required that each of the schemers participated in, or had knowledge of all of their scheme's operations. The guilt of a schemer is not governed by the extent of his participation.

Even if a defendant participated in the scheme to a degree less than that of his fellow schemers, he is equally culpable as long as he became a member of the scheme with knowledge of its general scope and purposes. Nor is it necessary that a defendant receive pecuniary benefit from his participation in the scheme as long as he, in fact, was a member of the scheme.

It is not necessary that all schemers have participated in the alleged scheme from its inception. A person who comes in at a later point with knowledge of the scheme's general operation, although not necessarily all of its details, and who intentionally acts in a way to further the unlawful goals, becomes a member of the scheme and is legally responsible for all that may be or has been done in furtherance of the criminal objective.

Charge of Judge Metzner, United States
v. *Mendlinger*, 75 Cr. 956 (Tr. 2846-47).

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REQUEST NO. 10

Corporate Criminal Liability

There are three corporate defendants on trial here as well. They are Amrep Corporation, and its wholly-owned subsidiaries Rio Rancho Estates Inc. and ATC Realty Corp. Of course, a corporation is a creature of law and has no mind or body of its own. Yet each corporation is entitled to the same deliberate and conscientious consideration which you apply to the individual defendants in reaching your verdict in this case.

A corporation can act only through its officers and agents. These officers and agents include the four individual defendants on trial, as well as other individuals of whom you have heard mention during this trial. A corporation is responsible for the acts of such officers, agents and employees who violate the criminal law, if such acts are done within the scope of employment and with intent to benefit the corporation or further the corporate business. In order to find a corporation guilty of a crime, you must find beyond a reasonable doubt that:

(1) an officer, agent or employee of the corporation has committed an act in violation of the criminal law;

(2) the officer, agent or employee was acting within the scope of employment or area of responsibility assigned or entrusted to him by the corporation; and

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Corporate Criminal Liability

(3) the officer, agent or employee acted with an intent to benefit the corporation or further the corporate business. This standard of corporate criminal liability applies to all counts in the indictment.

> Adapted from the charge of the Honorable Constance Baker Motley in United States v. Teleprompter Corp., 71 Cr. 1048 (Tr. 1172), aff'd, 472 F.2d 272 (2d Cir. 197).
>
> See Boise Dodge, Inc. v. United States, 406 F.2d 771 (9th Cir. 1969); United States v. Carter, 311 F.2d 934, 941, 943 (6th Cir. 1963); Magnolia Motor and Logging Co. v. United States, 264 F.2d 950, 954 (9th Cir. 1959); American Medical Ass'n v. United States, 130 F.2d 233 (D.C. Cir. 1942).

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REQUEST NO. 11

Aiding and Abetting

It is not necessary for the government to show that the defendant whom you are considering actually did every act constituting the crime charged in the mail fraud counts of the indictment himself. The government also relies on Section 2 of Title 18 of the United States Code, which reads as follows:

> "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> "(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, this section provides that a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself. Accordingly, you may find a defendant guilty of the offense charged if you find beyond a reasonable doubt that another person committed the offense and that the defendant aided and abetted him.

To determine whether the defendant aided and abetted the commission of the offense, you ask yourselves these questions: Did he associate himself with the venture,

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Aiding and Abetting

knowing the essential elements of the offense as I have outlined it for you? Did he participate in it as something he wished to bring about? Did he seek by his action to make it succeed? If he did, then he is an aider and abettor.

> Charge of Judge Metzner, United States v. Mendlinger, 75 Cr. 956 (Tr. 2861). United States v. Umans, 368 F.2d 725, 727-28 (2d Cir. 1966), cert. dismissed as improvidently granted, 339 U.S. 80 (1967); United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938) (L. Hand, J.)

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REQUEST NO. 12

Liability for Acts of Joint Ventures or Co-Schemers

When people enter into a scheme, also called a joint venture, to accomplish an unlawful end, they become agents for one another in carrying out the joint venture. Hence, the acts of one in the course of the joint venture and in furtherance of the common purpose are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that a joint venture existed between the defendant you are considering and another person, including another individual or corporate defendant, then acts done in furtherance of the joint venture by that other person may be considered against the defendant.

It is important to note that this principle applies only to the acts done during the continuance of the joint venture and in furtherance thereof, that is, to carry out an unlawful objective or purpose of the joint venture. It does not apply to acts which do not have these characteristics.

> *United States v. Marchisio*, 344 F.2d 653, 668 (2d Cir. 1965); *United States v. Annunziato*, 293 F.2d 373, 378, 380 n.4 (2d Cir.), *cert. denied*, 368 U.S. 919 (1961); *United States v. Pugliese*, 153 F.2d 497, 500 (2d Cir. 1945); *United States v. Olweiss*, 138 F.2d 798, 800 (2d Cir. 1943), *cert. denied*, 321 U.S. 744 (1944).

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REQUEST NO. 13

Land Sales Act Counts - The Elements

As I have previously instructed you, the essential elements which the government must prove beyond a reasonable doubt in order to sustain a conviction on the Land Sales Act counts are the following:

1. That the defendant you are considering is a developer or agent within the meaning of the statute;

2. That Rio Rancho Estates was a subdivision within the meaning of the statute;

3. That the defendant you are considering employed a device, scheme or artifice to defraud in connection with the sale of lots at Rio Rancho Estates, or engaged in a practice or course of business which operated as a fraud or deceit upon a purchaser;

4. That the defendant did so willfully and knowingly; and

5. That the defendant used a means or instrument of communication in interstate commerce pursuant to the scheme or course of business.

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REQUEST NO. 14

Land Sales Act - First Element

The statute defines a "developer" as:

"Any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision." (15 U.S.C. § 1701(4)).

The statute defines an "agent" as:

"Any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision." (15 U.S.C. § 1701(5)).

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REQUEST NO. 15

Land Sales Act - Second Element

The statute defines a subdivision as:

"Any land, located in any State or in a foreign country, which is divided or proposed to be divided into fifty or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan and where subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

15 U.S.C. § 1701(3).

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REQUEST NO. 16

Land Sales Act - Third and Fourth Elements

The third and fourth elements correspond to instructions that I have previously given you in detail on the mail fraud counts. These are the elements of the existence of a scheme to defraud in connection with the sale of lots at Rio Rancho Estates, and whether the defendants acted willfully and knowingly. The instructions which I previously gave you with respect to these elements apply with equal force to the Land Sales Act counts. My instructions on aiding and abetting also apply equally to the Land Sales Act counts.

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REQUEST NO. 17

Land Sales Act - Fifth Element

The last element of the Land Sales Act counts is whether a means or instrument of communication in interstate commerce was used pursuant to the scheme or course of business. This is similar to the requirement of a mailing which I previously instructed you on in connection with the mail fraud counts. It is the jurisdictional element. With respect to the six counts before you charging violations of the Land Sales Act, the government has introduced evidence of Rio Rancho commercials which were aired on both radio and television.

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REQUEST NO. 18

Credibility of Witnesses

Let me now give you some general instructions on how you should analyze the testimony of the many witnesses who testified at this trial.

How do you determine the truth and how do you appraise the credibility of the witnesses? Well, you use your own plain, everyday common sense.

You have seen the witnesses, you have observed the manner of their testifying, and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or their interest in the outcome. In other words, you again apply your common sense and your everyday experience. You may, of course, take into consideration the interest of a witness. An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider in determining the weight to be given and the credibility of his testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all of his testimony or accept such part of it as you believe worthy of belief or as appeals to your reason or judgment.

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REQUEST NO. 18 (Continued)

Credibility of Witnesses

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness made statements which are inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

Adapted from the charge of the Honorable Richard H. Levet in United States v. Tufaro, Appellant's Appendix at 37a-38a, aff'd, per curiam, 316 F.2d 240 (2d Cir.), cert. denied, 375 U.S. 832 (1963).

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REQUEST NO. 19

Uncalled Witness
(Equally available to both sides) and Cumulative Witnesses

If a potential witness could have been called by the government or by the defendants and neither side called him, then you may infer that the testimony of the absent witness might have been unfavorable either to the government or to the defendants or to both of them. But on the other hand, it is equally within your province to draw no inference at all from the failure of either side to call a witness.

> United States v. LaRocca, 224 F.2d 859, 861 (2d Cir. 1955); United States v. DiBrizzi, 393 F.2d 642, 646 (2d Cir. 1968); United States v. Evanchik, 413 F.2d 950, 953 (2d Cir. 1969); United States v. Crisona, 416 F.2d 197, 198 (2d Cir. 1969).

You should bear in mind, however, that there is no duty upon either side to call a witness whose testimony would be merely cumulative of testimony already in evidence.

> United States v. Antonelli Fireworks Co., 155 F.2d 631, 638-39 (2d Cir.), cert. denied, 329 U.S. 742 (1946).

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REQUEST NO. 20

Expert Testimony

The general rule is that witnesses are permitted to testify only as to facts and may not express their opinions. The exception to this rule is the opinion of a qualified expert on some particular technical matter. The expert may testify as to his opinion on a subject concerning which he has special knowledge. This is allowed on the theory that the advice of one experienced and versed in technical or special subjects will aid the jury.

You may consider the expert's qualifications and opinion; weigh his reasons, if any, and give his testimony such weight as you feel it deserves. As previously stated, expert opinion is purely advisory and you may reject it entirely if in your judgment the reasons given for it are not convincing or sound or if you find the facts to be different from those which formed the basis for his opinion. You may disregard his opinion if, after careful consideration of all the evidence in the case you disagree with the opinion. In other words, you are not required to accept the expert's opinion to the exclusion of the facts and circumstances disclosed by other testimony. Such an opinion is subject to the same rules concerning reliability and credibility as the testimony of any other witness. The determination rests with you - not with the experts.

From charge of Honorable Henry W. Goddard, U.S. District Judge, in the case of United States v. Alger Hiss, Jan. 20, 1950; see also Label v. American Airlines, 205 F.2d 927 (2d Cir. 1953); McCormick, Evidence §§ 11-13. Also from charge of Judge Motley

Expert Testimony

in United States v. Bright, 74 Cr. 247 (S.D.N.Y.1974).

REQUEST NO. 21

Admissions of the Defendant

Admissions of the defendant are among the most effectual proofs in the law, and constitute the strongest evidence against the party making it that can be given of the facts stated in the admissions. Accordingly, you are entitled to give great weight to the defendant's admissions in this case.

> [Some examples of defendant's admission in this case are the numerous SEC filings which state the awareness of no resale market; Carity's handwritten notations on Exhibit 498, to the effect that Amrep has no commitments to Rio Rancho Estates; Dan Friedman's statement that "mass psychology" is necessary to make sales; and Howard Friedman's speech wherein he stated that Amrep's costs are fixed, and price increases result in increased profits].

REQUEST NO. 22

Character Evidence

(Only if a Charge is requested by the defendants.)

Now, there has been some testimony here to the previous good character of some of the defendants. You should consider such evidence of character together with all the other facts and all the other evidence in the case in determining the guilt or innocence of the defendant. Evidence of good character may in itself create a reasonable doubt where without such evidence no reasonable doubt would have existed. You may consider what facts were known to the witness when he gave his testimony. But if on all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he had previously enjoyed a reputation of good character, does not justify or excuse the offense and you should not acquit a defendant merely because you believe he is a person of good repute.

> United States v. Kabot, 295 F.2d 848, 855 n.1 (2d Cir. 1961), *cert. denied*, 369 U.S. 803 (1962); approval continued in United States v. Birnbaum, 337 F.2d 490, 498-499 (2d Cir. 1964).

The testimony of a character witness is not to be regarded by you as expressing the witness's opinion as to the guilt or innocence of the defendant. The guilt or innocence of the defendant is for you -- and you alone --to determine.

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REQUEST NO. 22 (Continued)

Character Evidence
(Only if a Charge is requested by the defendants.)

From the charge in United States v. Hiss, Trial Record, p. 3266; aff'd, 185 F.2d 822 (2d Cir.), cert. denied, 340 U.S. 948 (1951).

It may be that those with whom the defendant came into contact previously were misled and that the defendant did not reveal to them his true character.

From United States v. Kabot, loc. cit. supra; see United States v. Birnbaum, loc. cit. supra.

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REQUEST NO. 23

Possible Punishment

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be imposed upon the defendant, if convicted, to influence your verdict in any way, or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts.

From the charge of Judge Weinfeld in
United States v. Bruswitz, aff'd, 219
F.2d 59, 62-63 (2d Cir.) cert. denied,
349 U.S. 913 (1953).

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REQUEST NO. 24

Protection of the Public

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

From the charge in *United States* v. *Witt*, 215 F.2d 580, 584 (2d Cir. 1954), *cert*. *denied*, *sub nom*. *Talanker* v. *United States*, 348 U.S. 887.

This charge was also approved in *United States* v. *Hiss*, 185 F.2d 822, 833 (2d Cir. 1959), *cert*. *denied*, 340 U.S. 948.

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REQUEST NO. 25

Sympathy: Oath as Jurors

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in the case, and the crucial hard core question that you must ask yourselves as you sift through this evidence is: Where do you find the truth? This is a quest for the truth, that's what a trial is. It's not a contest of salesmanship and it is not a contest in personalities. The only triumph in any case, whether it be civil or criminal, is whether or not the truth has triumphed. If it has, then justice has been done. If not, justice will not have been done. You are to determine the guilt or innocence of each defendant solely on the basis of the evidence and subject to the law as I have charged you.

> From the charge of Judge Kaufman in United States v. Davis, aff'd, 353 F.2d 614 (2d Cir. 1965), cert. denied, 384 U.S. 953 (1966), Appellant's Appendix at pp. 15a-16a.

The most important part of this case is the part that you now, as jurors, are about to play, because it is for you and you alone to decide whether each defendant is guilty or not guilty of the crimes charged.

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REQUEST NO. 25 (Continued)

Sympathy: Oath as Jurors

I know you will try the issues that have been presented to you according to the oath that you have taken as jurors, in which you promised that you would well and truly try the issues joined in this case and a true verdict render. And I suggest to you that if you follow that oath, and try the issues without combining your thinking with any emotions, you will arrive at a just verdict. It must be clear to you that once you get into an emotional state and let fear or prejudice or bias or sympathy interfere with your thinking, then you don't arrive at a true and just verdict.

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REQUEST NO. 26

Verdict Must Be Unanimous

When you go to deliberate, ladies and gentlemen, remember that there will be 12 of you and that the purpose of having 12 is the obvious one, of having you reason together. That means that each of you is entitled to have and express your own good judgment on the questions, the serious questions, entrusted to you.

At the same time, it is expected, obviously, that you will exchange views with your fellow jurors, You will be prepared to listen attentively and, where reason so dictates, and your conscience, to change an opinion you may have held which is shown to be erroneous. In the end, however, remember that the verdict, if and when you reach one, must represent the individual judgments and conscience of each member of the jury.

So you are not required to sacrifice or give up or forego a conscientious view simply because you are outnumbered at any given time. You must and you may give up your rational judgment if you are persuaded in reason and in conscience that you should change it.

The charges here, ladies and gentlemen, are most serious. The just determination of this case is important to the Government and to the public. It is

REQUEST NO. 26 (Continued)

Sympathy: Oath as Jurors

equally important to the defendants. Under your oath as jurors, you must decide the case without fear or favor and solely, as I have stated a number of times, in accordance with the evidence and the law.

If the Government has failed to carry its burden as to a defendant, your sworn duty is to bring in a verdict of not guilty. If the Government has carried its burden, you must not flinch from your sworn duty, but you must bring in a verdict of guilty against the defendant.

Adapted from the charge of Judge Wyatt in United States v. Zane, aff'd, 495 F.2d 683 (2d Cir. 1974), Trial Tr. at pp. 4127-28.

Any verdict must be a unanimous verdict, either way. The vote, when you reach a unanimous verdict, must be the vote of each individual juror under his conscience, in the light of what he has learned and come to believe after these deliberative efforts with his fellows.

Adapted from the charges of Judge Frankel in United States v. Capra, 73 Cr. 460 (S.D.N.Y. Nov. 19, 1973), Trial Tr. at p. 2965, and United States v. Carson, 71 Cr. 38 (S.D.N.Y. Nov. 19, 1971), Trial Tr. at p. 1761.

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REQUEST NO. 27

Miscellaneous Requests

In addition to the foregoing, the Government respectfully requests the Court to include the following customary instructions:

1. Circumstantial Evidence;

2. Right to have Exhibits and to have Testimony Read During Deliberations.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

PATRICIA M. HYNES
ALAN R. KAUFMAN
MICHAEL S. DEVORKIN
JOHN F. KALEY
Assistant United States Attorneys
Of Counsel

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---x

UNITED STATES OF AMERICA, :

Plaintiff, :

v. : 76 Cr. 644

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, HERMAN B. OBERMAN and DANIEL FRIEDMAN, :

Defendants. :

---x

March 10, 1977
10:00 a.m.

BEFORE:

HON. CHARLES M. METZNER,

District Judge

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York,
BY: PATRICIA HYNES, ESQ.,
MICHAEL DEVORKIN, ESQ.,
ALLAN KAUFMAN, ESQ.,
Of Counsel

APPEARANCES (Continued):

LARRY M. LAVINSKY, ESQ.
Attorney for defendants AMREP Corporation, Rio Rancho Estates, Inc., and ATC Realty Corporation

PETER FLEMING, ESQ.
Attorney for defendants Chester Carity and Daniel Friedman

STANLEY ARKIN, ESQ.
Attorney for defendants Henry Hoffman and Howard Friedman

THE COURT: Good morning.

THE CLERK: For sentencing, the United States of America versus AMREP Corporation, Rio Rancho Estates, Inc., ATC Realty, Chester Carity and Daniel Friedman, Howard Friedman and Henry Hoffman.

(All parties ready.)

THE COURT: I have the motions made by the defendants. I have read the briefs. I see that Mr. Fleming has requested oral argument.

I will take oral argument, Mr. Fleming, if you think you have anything you want to add to what is in the brief. Most of the arguments were already made on the record.

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MR. FLEMING: That's correct, your Honor.

The only point I would add is that the government's answer to the motion that we have made, the only answer that I perceive, is that the evidence to which we point, which we claim was admissible only on the issue of intent, if admissible at all, and, therefore, was not connected to any of the individual or any specific defendant. Their position is that essentially that evidence was what I would call furtherance evidence. I think our position is clear on our papers that the government can't really take that position in this case as they tried it, since for their own benefit they limited their own allegation of the common scheme to growth and good investment. That is our position and I think your Honor understands.

THE COURT: Mr. Arkin.

MR. ARKIN: If your Honor please, I would only suggest that the arguments contained in our motion papers, at least in two respects, are somewhat different than those I advanced during the course of the trial.

In particular on the main arguments having to do with the two claimed false statements of opinion, we argue there, if your Honor please, it is in our briefs, that under the Diogo and other similar cases, like the Steinhilber case, that where you have a representation, which is subject to varying interpretations, as most certainly these representations were, and where the government's evidence does not negative or make false or prove false or have sufficient evidence to prove false every possible interpretation of those interpretations, it fails, the government's case fails as a matter of law. That's a somewhat different approach than we took in our argument to your Honor previously.

We believe the very failure of the representations, which I certainly won't recount for your Honor now, are not susceptible to having negatived all the possible interpretations of good investment or growth to the northwest and, indeed, I think fairly interpreted those two representations, we discussed this before, are such that the government under no circumstances proved their case beyond a reasonable doubt.

We also made an argument, your Honor, in respect to the failure of the jury to have considered, this is a mathematical argument really, they couldn't have considered the evidence in respect to the television shows on certain counts, the interstate land counts, and also the evidence of mailing in Count 67, that is set forth in our brief.

I just wish to say to your Honor that we did not argue that before. That was a truly post trial motion based upon --

THE COURT: Of course, there the exhibits were admitted without objection, as I recall, by the defendants.

MR. ARKIN: Yes.

THE COURT: It happens in every case that an exhibit can be marked, admitted in evidence and never adverted to thereafter, but theoretically it is before the jury.

MR. ARKIN: The point, your Honor, is that a jury must have had the opportunity to have reviewed the evidence. In this particular case there was none because it was admitted out of the jury's presence, we consented to that, no question about it. The jury never called for those exhibits and, your Honor, I state the Alexander case, which I think sets forth the proposition, that a jury must have had an opportunity to have seen the evidence, to have deliberated upon it and considered it.

Here what happened is those parciular commercials were admitted out of the presence of the jury, in fact, after the case had closed down or was just about to close down, and then the jury never called for those commercials, nor did they call for the mailing evidence with respect to Count 67.

We say the jury under no circumstances could

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have considered that evidence and the fact that they theoretically, had they called for it, could have had it, does not in our minds satisfy the proposition that a jury must have seen it or touched it.

That was the only evidence, if your Honor please, upon that element with respect to those interstate land counts, that is the nature of the commercials, and the only evidence in respect to the mailing on Count 67.

THE COURT: Mr. Lavinsky, I gather your position is one of joining in with the motions made by Howard Friedman, Henry Hoffman and Rio Rancho Estates, and you take the same position as Mr. Arkin?

MR. LAVINSKY: We do, your Honor.

THE COURT: Is there anything further you wish to add?

MR. LAVINSKY: No, your Honor.

THE COURT: The motions are denied in all respects.

Ms. Hynes, do you have anything to say before the court imposes sentence?

MS. HYNES: Yes, your Honor, I do.

Your Honor, we have submitted to the court a sentencing memorandum, and I won't repeat the material in that memorandum to your Honor, and I am well aware that your Honor has heard the evidence in this case.

However, defense counsel have submitted sentencing memoranda and I would like to respond very briefly to a couple of points that they raise in their memoranda.

Both Mr. Fleming and Mr. Arkin characterized to the court that this is a strange case, an unusual case, indeed, it is a case of first instance that defines the boundary between lagal and illegal conduct.

In fact, there is nothing strange about this case. There is nothing unusual about this case. This is a classic fraud case. It is a case where land was sold as a good, safe, secure financial investment based upon false statements and false calims as to the investment value of that land.

There is nothing unusual about that type of case. It has been prosecuted for several years and there are a myriad of cases upholding convictions for such fraud prosecutions.

The second point is that most of the arguments that are raised, indeed, all of the arguments that are raised in the brief by the defense counsel, were arguments that were argued to the jury and rejected by the jury.

I think that, in fact, what we really have to focus on here is some of the really salient evidence in this case which does show what the defendants' intent was with respect to this land at a time when the defendants had almost sold off 55,000 acres, and this was in 1969, when there were roughly 315 homes at Rio Rancho Estates, the defendants acquired an additional 37,000 acres of land.

Certainly that acquisition was not required in terms of needing building sites. It was acquired so that the defendants could continue to sell this land, as they had in the past, as financial investments. It was not needed in terms of building a community.

The defendants have continually focused their attention throughout this case to the jury and to the court now at the time of sentencing on the community that does exist at Rio Rancho Estates.

The government has always conceded that a community exists there, and we have never denied that the defendants intended to build according to the demand and that the defendants, in fact, knew that the demand for homes at Rio Rancho would be very limited. The evidence, uncontradicted at trial, showed that the defendants themselves believed that only 5 per cent of their purchasers would move and relocate to Rio Rancho.

The evidence at trial also showed that there was no local demand for homes at Rio Rancho Estates, and internal memos were introduced which showed that the defendants knew that there was no local demand from the Albuquerque market for homes at Rio Rancho Estates.

I am not going to go into all of the evidence that was introduced to show that there was, in fact, no resale market during the entire 15 years that the defendants were selling this land as a safe financial investment.

The important point, your Honor, that the government has always focused on in this case, and, in fact, the point that this case is really about, is that this case is not about the people who built a home at Rio Rancho, who bought one lot and who live out there and always intended to relocate.

This case was always about the people who bought land as a financial investment to resell it. That includes some of the people who do live at Rio Rancho today and witnesses such as Mr. Mols testified at the trial and Mr. Gusowsky.

The fact is that these defendants sold the land as a safe financial investment. People relied on it.

It's absolutely clear that that was the primary inducement for the sale of this land. The scripts stated:

"This is an investment program, an opportunity to make a lot of money."

There have been many, many cases prosecuted, maybe not only in the land area, but in the securities area, in oil and gasoline, especially where items have been sold as a safe and secure financial investment based upon false statements and there have been fraud prosecutions.

That really is this case. The basic reasons given to people why this was a good financial investment the jury has found were false and misleading.

That's what this case is about. The defendants knew that the people that they were selling to understood their investment claims about the land. The defendants knew that these people understood that they would be able to resell it and they haven't been able to resell it and the defendants knew that there was no resale market for this land and continued to sell it.

Indeed, in 1969, they bought another 37,000 acres of this land indefinitely postponing the possibility of resale for people at a time when the defendants were making representations to people that they were going to set up a resale office when the land was sold out. When the 55,000 acres was sold out they bought yet another 37,000 acres.

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The defense counsel have made much to this court and to the jury, and the jury rejected it, the argument about the exchange privilege. What the defense counsel and the defendants have never come to terms with, either to the jury or to this court, is, one, that the commercial lots did not have an exchange privilege. They have never addressed themselves to that. Thousands of commercial lots were sold at prices ranging up to and in excess at the time that the indictment was filed of $25,000. There was no exchange privilege for those commercial lots.

The defendants knew that the overwhelming majority of people who bought this land bought it not to relocate but to resell it and that resale was not a possibility; that there was no resale market. None of that was disclosed in a meaningful way to these investors and that was really the crux of the government's case and it was what the jury found that these defendants engaged in, a fraudulent scheme to sell this land primarily as a financial investment.

Now, these defendants stand before your Honor today and say that they have done nothing wrong and, indeed, they ask this court to confirm that by sentencing them to probation, but a jury has found, your Honor, that they have engaged in a fraudulent scheme after a ten-week trial and many, many witnesses and many, many exhibits and after a careful and rather lengthy deliberation. A jury has found that these defendants indeed did engage in a fraudulent scheme to sell these lots as a financial investment based upon false and fraudulent representations.

I just want to stress to your Honor there is nothing unusual about this case. This is a case of white collar fraud. It is a case that really requires substantial sentences so these defendants -- these defendants -- who deny that they did anything wrong, and other like-minded persons, will be deterred from the commission of these types of fraudulent schemes.

Your Honor, I would like the opportunity to reserve some time to respond to their arguments.

THE COURT: Finish your presentation now.

MS. HYNES: Your Honor, that's what I have to say at this time.

THE COURT: There will be no time for rebuttal on sentencing. I won't permit it.

Mr. Lavinsky, do you have anything to say before the court imposes sentence?

MR. LAVINSKY: If your Honor please, could we follow the procedure we followed during the trial? I would like to yield to Mr. Fleming.

THE COURT: Mr. Fleming, you will go first?

MR. FLEMING: I will, your Honor, yes, sir.

Your Honor, I do not ordinarily speak at length on sentence because my feeling is that the court has given real consideration, and I know this court has, to a probation report, which we have read, with regard to the defendants we represent, I am sure your recollection and probably indeed a review of the record of this case and I am sure the letters that I know your Honor has received on behalf of both Mr. Carity and Mr. Friedman, some few of which I myself have seen.

The prosecution speaks of the offense and I will speak to the offense in a moment. They don't ever speak of the men.

It seems, your Honor, to me that we really are in an upside down world. If a man is a businessman and if a jury finds him guilty of a crime, then whatever good that man may have done is not mentioned, is ignored. The claim is made essentially because he has purportedly been a good man and who now has been found guilty of a crime, he should be punished more severely as an example to everybody.

There may be businessmen, I am sure your Honor has had them before you, who pose and who are convicted of crimes and who upon investigation disclose a pattern of criminality throughout their entire personal life. There is none of that in this case with regard to Mr. Carity or Mr. Daniel Friedman and I am sure, although I do not represent them and I have not seen the probation reports, with regard to the other individual defendants.

Chester Carity is a single man. He has a family. I think the letters to this court, those that I have seen, the probation report show that he is a man who is devoted to his family, who has helped his family, helped them financially, but I don't think that's as important as the help which I perceive he has given as a leader of his family group.

Daniel Friedman, his whole life insofar as I can perceive, has been one of decency. Your Honor is familiar with the terms of his marriage. I think it is quite a thing when a man marries, takes the responsibility for a step-daughter, when that daughter comes to consider him as her father, and when the actual real father of that daughter is able to say that Daniel Friedman has fulfilled that responsibility, that he has helped his own daughter.

I just don't see any way in the world from what I have seen that either of these men could be characterized as evil men, as pernicious men or as venal men or as really anything other than decent men. That's all ignored.

I always thought sentencing had something to do at least with the person, the human being upon which sentence was being imposed. That's all ignored.

This is an unusual case. Ms. Hynes says it is a classic fraud case. I leave it to your Honor. From my experience it is not a classic fraud case. There is too much good in this case, as a matter of fact, and I know that the jury rejected our argument, but I am talking now about sentence, there is too much good in this case to call this a classic fraud case.

Ms. Hynes says that we focus in our sentencing memorandum only on the community. We do not. We focus on value. I don't think there is any question in the record of this case but that the land at Rio Rancho is the best land contiguous to Albuquerque. I don't think there is any question on the record of this case that Albuquerque, if it grows, when it grows, is going to grow in that direction. I put the representations aside. The jury apparently found that purchasers were led to believe that they could realize upon investment when, in fact, they could not within the period of time they expected. I put that aside.

This is good land. It is developable land. It is not swamp land, not rocks, it is value. I think the answer as to how much value is there is still unanswered.

Ms. Hynes says that the major sales pitch was to sell this as a financial investment. It just doesn't bear out, if your Honor please. 57 per cent of the purchasers bought one half an acre. Another 24 per cent bought one acre. That's 84 per cent of the purchasers.

We submitted the Perlmutter affidavit. You would have thought and I would have thought that in view of an indictment, first, and then a criminal conviction, which was not unpublicized, that people owning Rio Rancho land, who had not moved to Rio Rancho and most of the people who own it have not moved, that they would be deluging Rio Rancho in the New York sales office for everything, for money back, for refunds, for cancellation, for fraud. It has not happened. That has to bear some relevance on the question of the scope of this fraud. That has to bear some relevance on the question of whether the purchaser witnesses in this case, as we say in our memorandum, really do represent the class of Rio Rancho purchasers or whether those people that we put on the stand do and others from whom your Honor may have heard represent them.

The reason this is an unusual fraud case to me is that accepting the jury verdict, all of these things we argued to the jury I believe are supported by the evidence, and they evidence hard work, they evidence, at least in my submission, dedication and a continuing dedication.

As I said to the jury, there are very few people I can think of, when you look at Rio Rancho and you hear what the people down there say, very few people I can think of convicted as they are of a fraud who have done as much good for as many people.

They argue deterrents. If you sell heroin, they don't argue deterrents, but if you are businessman they argue deterrents, an office which never to my recollection came and recommended jail unless there was an unusual instance for a top organized crime figure to their knowledge, a person who, forgetting the crime in question, the conviction in question, was known and proved to be a venal person. They argue deterrents.

The conduct of which these men were convicted in my submission, if your Honor please, took place in the 1960's. After the state agencies forbade representation of good investment, it was no longer made. Your Honor, I am sure, has read the most recent federal property report. There is no deterrent to the confuct for which these men were convicted because they can't be convicted again. Putting that aside, no fair person in my judgment can believe that these men are going to be before a court again.

Putting that aside, if your Honor please, as we say in our memorandum, there is so much talk about disparity of sentencing. That's really one of the basic arguments about white collar people. If it was sufficient in so many instances, almost identical instances in my review of the limited record available, of the criminal complaints, consent orders and so forth, if it was sufficient to the United States government in so many instances to perceive a civil remedy, isn't there some disparity in demanding jail in that one case where they have proceeded by indictment? They proceeded by indictment in this case, the jury's verdict sustains their judgment, but that's a far cry from saying, "We also have to put these men in jail."

Your Honor, I ask this court, I believe in this court and I ask this court for the greatest leniency to the men I represent and I do it because of what I believe the record reflects, the record before your Honor in the form of the probation report and the letters to this court, the kind of men these men are, in fact, at hears, the good that is in their lives.

I ask for leniency because for the life of me I cannot in this case see how anything can be gained by putting these people in jail and I can't for the life of me perceive how really anything substantial can be added to their punishment.

Finally, if your Honor please, I ask for leniency in this case because, the jury verdict aside, I obviously am not in a position to contest that, there is so much good about this case that it is an unusual case. There is so much good about Rio Rancho that it is an unusual situation. It is not Lowell Birrell and a boiler room.

I believe also, if your Honor please, the real answer to Rio Rancho does, in fact, lie in the future.

We do not say that these men were not convicted We say they may not have been wrong. We are talking about their belief in the project.

Your Honor, I do ask for leniency. I am sorry to impose upon the court.

THE COURT: Mr. Arkin.

MR. ARKIN: Your Honor, I will speak for Howard Friedman and Ms. Cross for Mr. Hoffman and Mr. Friedman begs your indulgence to make a brief statement himself.

THE COURT: I will ask each defendant individually for that when you have completed.

MR. ARKIN: Yes, your Honor, I understand.

I find speaking at a time of sentencing, particularly in this case, a very difficult thing to do.

I have represented Howard Friedman and others in the case for about three years, somewhat over three years now, and, your Honor, my belief about Mr. Howard Friedman I am sure is borne out by the probation report, the many letters you have received, the many testimonials that this man is a decent human being, who has raised a beautiful family of four children, who lives in a community that regards him highly and to which he contributes his time, energy and resources. He is a man who has devoted a substantial percentage of his energies and resources to charitable projects and religious projects.

He is somebody whose entire makeup, his being, I think cries out that he is a decent man. He is an honest man. He is a man who has lived his life to a standard which is high, a high moral standard. To find him in this situation is particularly difficult and I think particularly so in light of the kind of case, which I cannot agree enough with my friend Mr. Fleming, is an unusual case, one which I have trouble reconciling to what I have always believed was the purpose and scope of the criminal law.

I am not going to quarrel at this point in a sentencing context with the jury verdict. That would not be appropriate. I am sure your Honor knows my feelings and my thoughts in respect to that, but there are aspects of this case, the good aspects, which I think do bear upon the issue of sentencing, do bear upon what was in Howard Friedman's mind, and the others, in the 15 plus years he has devoted to Rio Rancho and AMREP as well as to the other things which I mentioned just previously.

The land sales industry has been one which is highly regulated and of late and perhaps on occasion in the past has been somewhat controversial. It is a public industry. It is one where everybody, citizens, courts, agencies alike are aware of a particular kind of business, call it the custom and usage of an entire industry. I suggest some of these companies perform socially desirable ends, perhaps some did not. I believe that AMREP did.

The custom and usage, the common practice in this industry, and I think that this must be considered in terms of what was in my client's mind, because while he has been convicted of a crime under a very broad statute, a statute of broad embrace, all intents are not the same intents. The fact that a jury found him guilty does not militate against him having had in his mind an intent which is not inconsistent and which, in fact, cries out and demands that he be treated with some mercy and leniency.

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This industry, and we provided your Honor with a thick stack of papers showing what the custom and usage in the industry has generally been over the years, has in a context of heavy regulation made representations of good investment, representations as to future worth, all of which, the nature of those representations were countenanced, known and out in the open, permitted by regulatory agencies.

This man operated in an industry which I think he was the best and his company was the best by far seeing that everybody was out in the open, not clandestine, not under the table, not hidden, were doing the same thing, were making the same kinds of representations, acquiesced in and permitted by state agencies and by the federal government until this case was brought last year or the year before last now.

Mr. Friedman and the company hired seven in-house lawyers and two distinguished law firms on the outside.. All of them guided, advised, counseled, saw what they were doing, assisted them in the various documents they had to prepare, nobody told them to stop doing it, you are breaking a law, you are committing a crime.

It's not too much to say that in this man's mind, Howard Friedman's mind, he could not have conceived, he could not have assumed a risk that what he was doing was criminally sanctionable, a violation of a mail fraud status was evil. It was what the business was about. It was countenanced and regulated. It was what people in a high and, apparently, respectable level were doing and they were doing it better.

The acquisition of the 37,000 acres, which Ms. Hynes comments on again and again, that, too, approved by lawyers, approved out in the open by the board of directors of a public company, approved or, if your Honor doesn't like that word, certainly acquiesced in, permitted and countenanced by a regulatory agency, hardly something which has the earmarks, the quality, the evil of an ugly event.

He had no reason ever to believe that he was doing something which would bring him to the bar here for criminal sanction. The industry itself, of all the companies, since this case ended, I have seen in the newspapers a number of times, we provided your Honor with the various decrees, concent decrees, FTC decrees, Great Western, ITT Palm Coast , companies, public companies, engaging in the kind of conduct condemned here and I say engaging in it in a way which was far worse than even somebody with a hostile view of AMREP could state and those companies the government chose to have them enter into consent decrees.

ITT Palm Coast suggested that they go ahead and perform certian obligations, come through with certain representations, which they made, and that was the end of that.

By the way, I should say the very same things that ITT Palm Coast was compelled by the government to agree to do were things which my clients have done voluntarily before this case.

These other people in the industry, they were not condemned criminally, not put through the anguish of three years of a grand jury investigation, a year of waiting, ten weeks of trial and coming here today and though I don't know how many, the very many civil actions which have sprung up and been spawned by publicity attendant to this particular case.

These people were better than the other companies in the industry. They do not deserve to be here, and I say that respectfully. The built a community near Albuquerque. I wish your Honor could have seen it. I have been there. It has 7,000 people. It is growing. There are going to be 600 to 1,000 more homes in the next year there.

They never stopped doing it because the case was brought. They didn't take money and run. They fulfilled all their obligations.

It is a fast growing community. The Governor of the State of New Mexico, the former governor, other people who live there and have a stake in that community, New Mexico, which, by the way, my client, Howard Friedman, has devoted a good portion of his time and energies to, that is in New Mexico, they all believe in Rio Rancho. They don't think it is a fraud, a rip-off. They don't believe it is worthless.

There are people who came to this court, Mr. Graham, he put $14 million in Rio Rancho. People are buying homes there, roads are widened and expanded to give better access between Rio Rancho and Albuquerque and it is very near Albuquerque. It is not a forlorn desert under water jungle infested place. Quite the contrary. It is a beautiful place.

They put tens and tens of millions of dollars into it and they have built a community and they have accomplished something I might say that our government is trying to do in the New Cities Program and have failed miserably in doing. They have built a new city for citizens and they have given an alternative life style to thousands of people and thousands more to come in the future, whereas our agencies have failed to do that with hundreds of millions of dollars of the taxpayer's money. They have done it well. They have done it using concepts which have been condemned in this court, the exchange concept, which even their own witnesses say was neat, desirable, intelligent.

I say the land is not worthless. In fact recently, and we put this in our brief to your Honor, the Public Service Commission of New Mexico is bidding a substantial amount per acre for an easement, $1826 per acre. That is a public agency bidding for an easement.

People have bought and sold homes there at profits. Land is going up out there. I don't know how many years, ten, fifteen, it may even be, you can never tell when you make an investment. It may turn out to be very profitable, as it has for some people at this very time now.

In this case now I suppose the clarion call has gone out to henceforth making a representation to somebody that what you are buying is a good investment or is in the path of progress, I suppose henceforth people shouldn't do that on pain of criminal sanction, but I say to your Honor there is no need for here for jail to act and to serve as a deterrent to my client and their companies. My client is a decent man. He has put a lot of his time and energy into this company, this process of building a community. He couldn't have had in his mind that he was committing an evil, wicked, awful act.

The amount of suffering which somebody like Howard Friedman, who devotes so much of his time and energy to helping his community and being rewarded by status in his community, having to be convicted of a crime and having whatever resources he has gathered over the years of hard work put in serious jeopardy by all the bounty hunters who bring these various stockholder suits and whatever, that is very adequate punishment, more than adequate, severe punishment and the anguish he has felt and his wife and four children, the kind of man he is and the kind of family he has raised, that is adequate, that is severe, that is more adequate and severe.

I ask your Honor not to put this man in jail. I don't think this case warrants it. It warrants nothing like that.

Ms. Cross wants to speak.

MS. CROSS: Your Honor, I have read the presentence report of Henry Hoffman. It gives you a picture of the man, but in a dry recitation of facts it cannot really give you a complete picture of the man.

You have gotten many, many letters about Mr. Hoffman, as well as the other individuals, who have described and told you what they think of Rio Rancho and what they think of these men as individuals.

You have gotten, for example, a letter from the Governor of New Mexico where he says: "I do want to express my conviction, shared by the New Mexico Congressional Delegation and a great majority of our constituents, that AMREP has a fine record in New Mexico" and he goes on to say, "I think it would be a disservice to classify this development with those fraudulent land speculators and exploiters which my administration has opposed and will continue to oppose."

I want to discuss with you one very important aspect of Mr. Hoffman which is not really reflected in the presentence report, but which you can see in some of the letters which your Honor has gotten. That is his generosity as a human being.

Dr. William Baird and Mrs. Barbara Ann Miller have both written to your Honor about the extensive work that Mr. Hoffman has done with drug addicts. For example, many nights over many, many years Mr. Hoffman

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has gone from 10:00 p.m. in the evening until 4:00 a.m. in the morning working with drug addicts in Dr. Baird's clinic. He has helped Dr. Baird get out educational brochures, newsletters, done the artwork and so on.

He is putting a reformed addict through Syracuse University. He has done a great deal of work with drug addicts and spent a lot of his personal time doing it.

Mr. Hoffman was in Greece when the Junta took power in 1967. He stripped himself of all of his valuables, got as much money as he could and gave it to Greek Democrats whose lives were in danger. He is now sending one of those students to get a doctorate at Etruscan College in Rome.

Many people have written to you about this aspect of Mr. Hoffman. A woman whose daughter he is sending through school. People and the neighbors that he has helped when they were in debt and he was running their business for them. How he gave help to people who wanted to go into copyrighting and how he has given money to people, without question, without ever expecting repayment for it.

He supported many people in the arts, which is one of his great interests, in the theater. Numerous letters to your Honor attest to that aspect of Mr. Hoffman.

He has taken care of his family. His parents are both very old and very sick. He supports them. He has not been able to tell them about this conviction because it would probably kill them, but he visits them, he supports them, he takes care of them. He takes care of his children not only financially but emotionally.

This is one aspect of Mr. Hoffman which I think should weigh heavily with your Honor. It is a commitment to people that he has shown. He is someone who has shown great humanity to other people and at this time he would ask that your Honor show humanity to him.

THE COURT: Mr. Lavinsky.

MR. LAVINSKY: If your Honor please, much of what should be said on behalf of the corporate defendants has already been said by Messrs. Flemming and Arkin or included in their sentencing memoranda, and I am going to be quite brief.

Ms. Hynes to the contrary notwithstanding, this is a precedent-setting case in which conduct that has been common to the land development industry has for the first time been held to be criminal. This is not a case where the defendants sold land to the public and ran. AMREP over a fifteen year period has developed a community at Rio Rancho of which any developer could justly be proud.

As your Honor will recall, the presentence report talks in detail about the extent of development at Rio Rancho. It mentions various of the facilities there and the fact that 770 people are now employed in the industrial park.

Interestingly, while the prosecution has consistently maintained that less than five percent of Rio Rancho has been or ever will be developed, the presentence report states that one-ninth of Rio Rancho is already under development. Indeed, during the trial and even today the prosecution has implicitly paid tribute to the development by limiting its charge of criminal fraud to those who purchased for investment, not for those who purchased to live there.

Furthermore, as the presentence report notes, AMREP is a public corporation, which has 12,000 stockholders. These public stockholders, along with the individual defendants, will suffer the cost of the fine imposed upon AMREP in this case as will the over 40,000 homesite owners who look to AMREP for continued investment at Rio Rancho.

We submit that given the precedent setting nature of this case, which will itself act as a deterrent as far as the sales practices complained of, the substantial stake of the public in AMREP's continued financial viability and the good faith displayed by the defendants in developing an outstanding community, I would urge your Honor to impose a minimal fine upon AMREP.

Thank you, your Honor.

THE COURT: Mr. Carity, do you have anything to say before the Court imposes sentence upon you?

DEFENDANT CARITY: I believe I gave your Honor a statement of how I feel, and I have nothing to add.

THE COURT: Mr. Daniel Friedman.

DEFENDANT DANIEL FRIEDMAN: Everything that I wanted to say was written in my statement, your Honor.

THE COURT: Mr. Howard Friedman.

DEFENDANT HOWARD FRIEDMAN: Yes, your Honor, if I may, I would like to say a few words.

Your Honor already has a written statement which I prepared and which explains my views on the matter that brings me to stand before you today for sentencing. I only wish to take a moment more of your Honor's time.

The last three years have been a distressingly difficult time for me, my wife, my four children, my parents, my sisters and my many friends and relatives.

The anxiety, uncertainty and unhappiness caused by a lengthy grand jury investigation, a trial with me as a defendant, the unexpected verdict of guilty, and all the attendant publicity, the many civil actions and even dozens of viscious, obscene crank telephone calls my wife and children have received have all taken their toll on me and my family. Included in this bad dream is the knowledge that I will lose my CPA certificate, which I have held for thirty years, and also lose my right to vote, which I have exercised for the same period of time.

I have been able to think about little else in the past few months. I know the jury has found me guilty and that your Honor has determined that the evidence against me was legally sufficient for that verdict. I must say that knowing that verdict or, indeed, even the circumstances that I was charged with a crime has been extremely difficult, if not impossible, for me to understand or accept.

I have always tried to live my life in a moral way and do what I thought was right. I have raised my children in a way which makes me proud of the family life my wife and I created and proud of them, too.

I have devoted part of my life to religious activities and to community affairs, which I have always believed are important to the life of people with good character. I believe, too, that my business life has been moral.

The last fifteen years much of my time and energy has been devoted to Rio Rancho and Albuquerque. I stand here today, but I must say to your Honor I do not believe that Rio Rancho is evil, is a fraud or is in any way socially undesirable. I am proud to have been an important part in creating a beautiful new city, the fastest growing in New Mexico, where thousands of people now life happily and where many more thousands of people will come to live happily in the future.

I have always believed and I believe today that Rio Rancho is a good place to live and that my company and I, in providing an alternative way of life for all these thousands of people, have done something which is worthwhile.

I am not ashamed of Rio Rancho. I am desperately sorry that my future and that of my family and Rio Rancho have all been brought to this point where

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our futures are determined in the context of a criminal case.

I intend, if I am able to continue, to devote my life to my family, my religion, my community and to Rio Rancho, as I have in the past. Throughout this three year anguishing period my efforts have continued uninterrupted and Rio Rancho, too, in that same period, despite untold adverse publicity, has continued to grow and flourish and become more and more the realization of the vision and determination my associates and I had sixteen years ago and still have today.

Thank you, your Honor.

THE COURT: Mr. Henry Hoffman.

DEFENDANT HENRY HOFFMAN: The statement which I submitted for your Honor's consideration expresses my feelings.

THE COURT: Sentencing is always a difficult task for the Court even in what may appear to be the easiest of cases. The fate of human beings is involved and the Court knows that even one day of lost freedom in custodial surroundings burns to the core the very essence of a person. It becomes even more trying when you are called upon to decide the extent of the sanction to be imposed upon a convicted defendant to whom all the advantages of life are available, whose family stuctures are firm, and about whom it is said that he and his wife and children have suffered and will suffer enough, even if all is forgiven at this point.

Of course, it is obvious that such a criterion is totally unfair. The advantaged would continue to experience freedom and the disadvantaged would go to jail for lack of family ties, standing in the community and opportunities for advancement.

So, we wrestle with the problem of society's interest as embodied in the criminal law, the type of crime involved, and the individual who has been found guilty of breaking that law.

Reports are made by the probation service which produce some insight in some areas. Sentencing memorandum have been submitted by counsel for the government and defendants and each of the defendants has submitted his own statement for consideration. The Court has read all of these and most of the hundreds of letters addressed to the Court by interested third parties on behalf of the defendants.

The government's memorandum exaggerates certain of the facts and the inferences to be drawn from some of its arguments.

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Defense counsel seek to downgrade the offense and offer evidence of lack of culpability. However, the position of the advocate is understood by the Court and treated accordingly.

Every argument made in the statement submitted by the individual defendants to sustain their claim of good faith belief in what they were doing was submitted to the jury by their counsel in summation. Each of them was referred to by the Court in that portion of its charge to the jury which summarized the contentions made by the defendants.

The fact remains that the defendants have been found guilty as charged after a long trial. The defendants were represented by experienced counsel and were afforded every opportunity to answer those charges.

The thoughtful consideration given by the jury to the issues involved is attested to by the fact that it spent three and a half days in deliberations before reaching a verdict.

In this case structured programs for rehabilitation of the defendants are not required. Neither is incarceration for pure punishment of the individuals.

What is left here is the easily understandable and necessary need for deterrence to others in the so-called white collar crimes. It has a rationale that peculiarly fits the type of individual who becomes involved in such activity.

The resolution of the question is the length of sentence has been seriously compromised by the government's action in dealing with other large land developers who appear to have been just as guilty of the same type of wrongdoing as these defendants. All of them have been punished after negotiation between the government and the alleged wrongdoers with cease and desist orders or permanent injunctions against repeating the offenses in the future.

As examples, I refer to the cease and desist order entered on consent involving the Gulf American Corporation in February 1974. The cease and desist order entered against Los Alamos Ranch and others in 1975.

The cease and desist order entered on consent against Flag Industry, Inc. in February 1976.

And the cease and desist order entered on consent against the International Telephone & Telegraph Company in April 1976.

The original indictment here was handed up in October 1975. The superseding indictment was filed in July of 1976 with trial commencing on November 3rd.

I would have imposed sentences of greater length if it were not for this course of conduct by the government.

I impose a sentence of six months on each of the individual defendants on each of the counts on which they have been found guilty by the jury.

As to the corporations, the proof shows that a single act by one individual did at the same time inculpate some or all of the corporations. This is so because of the different hats worn by the same defendants and the inter-relationship of the three corporations.

Consequently, as to the three corporations, it would appear to the Court that only one fine should be entered on each count and that against the parent corporation, AMREP. Consequently, the maximum fine of $1,000 on each of the mail fraud counts is imposed and a $5,000 fine on each of the five counts involving violations of the Land Disclosure Act is imposed, making a total of $45,000.

I wish to advise all of the defendants of their right to appeal the judgment of this Court entered upon the verdict of the jury. You are to consult with counsel and counsel are directed to file notices of appeal on behalf of their clients, if they are so directed after such consultation.

I will continue bail pending appeal.

MR. ARKIN: That six months is concurrent, I take it?

THE COURT: Yes.

MR. FLEMING: We do intend to file a notice of appeal, as I am sure your Honor would expect.

THE COURT: There is an original indictment that is open here. I will entertain a motion to dismiss.

MR. FLEMING: I so move, your Honor, on behalf of all defendants.

MR. ARKIN: I join in the motion, your Honor.

THE COURT: The application is granted.

(Time noted: 11:07 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA :

- v - : INDICTMENT

: 75 Cr. 1023

AMREP CORPORATION, :
RIO RANCHO ESTATES, INC.,
ATC REALTY CORP., :
[illegible] FRIEDMAN,
CHESTER CARITY, :
IRVING W. BLUM,
[illegible] L. HO[illegible], :
[illegible] B. O[illegible],
[illegible] M. [illegible], :
and [illegible],

Defendants. :

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The Grand Jury charges:

Introduction

1. AMREP CORPORATION (hereinafter referred to as "AMREP"), the successor corporation to American Realty and Petroleum Corporation and Great Sweet Grass Oils Company, is and was at all material times herein a corporation organized under the laws of the State of Oklahoma, with its principal place of business at 16 West 61st Street, New York, New York within the Southern District of New York.

2. RIO RANCHO ESTATES, INC. (hereinafter referred to as "RIO RANCHO") is and was at all material times herein a corporation organized under the laws of the State of New Mexico and a wholly owned subsidiary of AMREP.

3. Rio Rancho Estates is and was at all material times herein a subdivision owned by RIO RANCHO and presently consists of more than 91,000 acres of semi-arid desert land, formerly a cattle ranch in Sandoval County, New Mexico.

4. ATC REALTY CORP. (hereinafter referred to as "ATC") is and was at all material times herein a corporation organized under the laws of the State of New York, and a wholly-owned subsidiary of AMREP engaged in the sale of lots at Rio Rancho Estates, with its principal place of business within the Southern District of New York.

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5. As of the date of the filing of this indictment EDWARD W. FRIEDMAN is President and a director of AMREP and RIO RANCHO and a director of ATC and was at all material times herein an officer and director of AMREP, RIO RANCHO and ATC.

6. As of the date of the filing of this indictment CHESTER CARITY is Executive Vice-President and a director of AMREP and RIO RANCHO and President of ATC and was at all material times herein an officer and director of AMREP and RIO RANCHO.

7. As of the date of the filing of this indictment IRVING W. BLUM is Chairman of the Board and a director of AMREP and RIO RANCHO and was at all material times herein an officer and director of AMREP and RIO RANCHO and a director of ATC.

8. As of the date of the filing of this indictment HENRY L. HOFFMAN is a director of AMREP and RIO RANCHO and until September of 1974 was Senior Vice-President of AMREP and RIO RANCHO and from October 1, 1974 up to and including the date of the filing of this indictment was and is a consultant under contract for AMREP and was at all material times herein an officer and director of AMREP and RIO RANCHO.

9. HERMAN B. OBERMAN was President of AMREP and RIO RANCHO in 1961 and a director of AMREP and RIO RANCHO in 1961 and 1962 and was at all material times herein an agent for AMREP and RIO RANCHO.

10. As of the date of the filing of this indictment SOLOMON H. FRIEND is Senior Vice-President, General Counsel and a director of AMREP and Vice-President of RIO RANCHO and ATC and a director of ATC and was at all material times herein from approximately 1970 an officer of AMREP and from approximately 1971 a director of AMREP.

11. As of the date of the filing of this indictment DANIEL FRIEDMAN is Senior Vice-President of Sales and a director of AMREP and Vice-President of RIO RANCHO and was at all material times herein from approximately 1967 an officer of AMREP and from approximately 1972 a director of AMREP.

12. This introduction is hereby incorporated and realleged in each and every count of this Indictment as if fully set forth therein.

COUNTS ONE THROUGH SEVENTY

13. From on or about January 1, 1961, and continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, HOWARD M. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERBERT B. OBERMAN, SOLOMON H. FRIEND, DANIEL J. FRIEDMAN, AMREP, RIO RANCHO and ATC the defendants herein, and other co-schemers to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud and for obtaining money in excess of $200,000,000 and property from purchasers of lots at Rio Rancho Estates by means of false and fraudulent pretenses, representations and promises.

I. The Objects of the Scheme and Artifice to Defraud

14. It was the principal object of this scheme to defraud for the defendants and co-schemers to acquire more than 91,000 acres of semi-arid desert grazing land in Sandoval County, New Mexico for approximately $180 per acre, to subdivide this desert land into approximately 86,000 lots of approximately one-half acre in size by bulldozing dirt roads and staking boundary corners, and to describe and to sell these lots as "homesite" and "commercial" lots in a "master-planned community" to persons throughout the United States at prices alleged to include water, utilities and other customary amenities which prices presently range from approximately $6,200 to $11,800 per acre for "homesites" and $3,150 to in excess of $25,000 for "commercial" lots, plus interest. The overwhelming majority of purchasers were intended to be and were persons who would not and did not

purchase these lots except in reliance upon false and fraudulent pretenses, representations and promises by the defendants and co-schemers that such purchases were safe and secure financial investments which would appreciate rapidly and greatly in market value and could be resold at a substantial profit. (These purchasers are hereinafter referred to as "the persons to be defrauded.")

15. It was a part of the scheme and artifice to defraud that the defendants and co-schemers would and did cause lots in Rio Rancho Estates to be sold by means of high-pressure sales techniques which involved a variety of false and fraudulent pretenses, representations, promises and means which were designed and devised by them to mislead the persons to be defrauded to believe, among other things, that the purchase of "homesite" and/or "commercial" lots was a unique investment opportunity made possible by RIO RANCHO's "low mark-up policy"; that the "homesite" and "commercial" lots sold and offered for sale were being developed by defendants as part of their "master-planned community"; that Rio Rancho Estates was directly in the path of Albuquerque's growth; that Albuquerque was "bursting at the seams" and could only grow to and through Rio Rancho Estates; that building land in and around Albuquerque was scarce, thus assuring a brisk resale market for "homesite" lots and a demand for "commercial" lots at Rio Rancho Estates; that the "homesite" and "commercial" lots at Rio Rancho Estates would be easily resalable and certain to appreciate in resale market price; that these "homesite" and "commercial" lots at Rio Rancho Estates were a sound, virtually risk-free financial investment which would provide financial security for the purchaser's retirement, for the education of his children and for other financial objectives, all of which were false, fraudulent, and misleading, as defendants and co-schemers well knew.

16. It was further part of the scheme and artifice to defraud that the defendants and co-schemers would and did deliberately conceal and fail to convey to the persons to be defrauded information within the possession of the defendants and co-schemers which they knew would show that the purchase of "homesite" and/or "commercial" lots was not a sound risk-free financial investment, but was an exceptionally poor, risky, and dangerous investment; and, among many other relevant facts, the defendants and co-schemers failed to reveal and convey to the persons to be defrauded that they knew and believed that the overwhelming majority of these lots could not be resold at a profit, or even at cost, within any foreseeable future; that there had been virtually no resale market for these lots throughout the entire fourteen-year history of this scheme and artifice to defraud; that most purchasers wishing to resell their lots would not be able to sell them at all; that the defendants and co-schemers had not and were not improving the lots being sold with water, utilities and other customary amenities; that their "master plan" in no way assured that the lots sold would ever become part of a developed community; that the defendants and co-schemers had no intention of substantially or completely developing Rio Rancho Estates as a "master-planned community" at any time; that the defendants and co-schemers had no expectation that Rio Rancho Estates could be or would be completely developed in less than 200 years, if ever, that the defendants and co-schemers were selling the lots at Rio Rancho Estates in such a manner as to prevent or indefinitely postpone its development as a fully-developed "master-planned community," and that the growth of Albuquerque had not had and would not have any significant effect upon the demand for "homesite" and "commercial" lots at Rio Rancho Estates within any foreseeable future.

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17. By all the false, fraudulent pretenses, representations, material omissions, and means employed, it was the aim of defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO, and ATC, to defraud the persons to be defrauded of sums in excess of $200,000,000.

II. The Means of the Scheme and Artifice to Defraud

18. Among the means by which the defendants and co-schemers would and did cause the aforesaid scheme and artifice to defraud to be carried out were the following:

(a) In approximately July, 1961, defendant HERMAN B. OBERMAN, as agent for defendant AMREP, entered into a contract to purchase a tract of approximately 54,000 acres of semi-arid desert grazing land in Sandoval County, New Mexico, at an average price of $178 per acre.

(b) In approximately August, 1961, defendants HERMAN B. OBERMAN, IRVING W. BLUM, CHESTER CARITY, HOWARD W. FRIEDMAN and HENRY L. HOFFMAN as executive officers and directors of defendant AMREP organized and caused to be organized defendant RIO RANCHO in order to take title to the 54,000 acre tract of land and, among other things, to subdivide and to engage in the sale of lots in Rio Rancho Estates.

(c) In approximately August, 1963, defendants HOWARD W. FRIEDMAN, CHESTER CARITY and HENRY L. HOFFMAN organized and caused to be organized defendant ATC in order to sell the lots at Rio Rancho Estates.

(d) Between August, 1969 and January, 1971, the defendants and co-schemers would and did cause defendant RIO

RANCHO to purchase five additional tracts of land totaling approximately 37,000 acres, approximately 31,000 acres of which were purchased at an average price of approximately $180 per acre which land was contiguous to the original 54,000 acre tract and became part of Rio Rancho Estates.

(e) Beginning in late 1961 and at all material times herein, the defendants and co-schemers would and did cause the land at Rio Rancho Estates to be subdivided into approximately 86,000 lots of approximately one-half acre in size by bulldozing dirt roads and staking boundary corners, which lots were then described and sold and offered for sale as "homesites" and "commercial" lots in a "master-planned community" at prices which were represented to include water, utilities and other customary amenities.

(f) The defendants paid approximately $17,850,000 for the land comprising Rio Rancho Estates, and as of the date of the filing of this indictment, the defendants and co-schemers have sold approximately 77,000 lots to approximately 45,000 purchasers in approximately 37 states, generally under installment contracts requiring a down-payment and monthly payments plus interest charges over five to eight years for total sales, including interest, of more than $200,000,000; and the defendants and co-schemers are offering the remaining 9,000 lots for sale for a price in excess of $30,000,000.

THE SELLING TECHNIQUES

(g) From 1961 through in or about 1964, the defendants and co-schemers marketed the lots at Rio Rancho Estates through direct mail campaigns and through advertisements in newspapers, magazines and sales visits to the homes of the persons to be defrauded, and from in or about 1965 up to and including the date of the filing of this

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indictment, the defendants and co-schemers would and did also devise and put into effect an elaborate high-pressure sales campaign which was and is based upon false and fraudulent pretenses, representations and promises and which employed the following techniques and practices, among others:

i) the defendants and co-schemers would and did cause invitations to be sent through the mails offering recipients free dinners at restaurants during which sales presentations were made which were designed to induce the persons to be defrauded to sign contracts at said dinners for the purchase of lots at Rio Rancho Estates;

ii) the defendants and co-schemers would and did plan and devise their sales campaigns and dinner presentations in order to exploit any lack of financial sophistication and knowledge on the part of the persons to be defrauded concerning the making of reasonably secure financial investments;

iii) the defendants and co-schemers would and did design and devise their over-all sales campaign in order to induce the persons to be defrauded to buy lots at Rio Rancho Estates because of their alleged value as a financial investment and for the opportunity to resell the lots at substantial profits, and the defendants and co-schemers knew at all times that this was, in fact, the essential inducement to the overwhelming majority of sales made;

iv) the defendants and co-schemers would and did design and devise the pictures, films, promotional material and sales presentations, upon which the persons to be defrauded were expected to and did rely in making their purchase, so as to deceive the persons to be defrauded into believing that the purchase of lots at Rio Rancho Estates was a sound and profitable financial investment;

v) the defendants and co-schemers would and did cause the purchase of lots at Rio Rancho Estates to be represented as an "investment program" which offered the persons to be defrauded an opportunity to make a lot of money;

vi) the defendants and co-schemers would and did cause their salesmen to distribute "Confidential Surveys" at the beginning of the sales dinners which were designed to elicit information from the persons to be defrauded as to the maximum amount of money they could "invest" and which were further intended and designed to encourage the persons to be defrauded to remove moneys already invested in mutual funds, stocks, insurance and savings and to reinvest these funds in the purchase of lots at Rio Rancho Estates in order to provide the persons to be defrauded with financial security for their retirement, and for other purposes;

vii) the defendants and co-schemers would and did conceal from the persons to be defrauded information which indicated that the lots were a largely non-liquid, risky, and poor investment;

viii) the defendants and co-schemers would and did employ salesmen to sell lots at these dinners who were compensated solely on a commission basis and whom defendants and co-schemers caused to be trained to maximize immediate "impulse" sales and to represent themselves as "land consultants" qualified to give knowledgable and disinterested investment advice, thereby discouraging and preventing the persons to be defrauded from consulting with lawyers or knowledgable financial advisors prior to signing contracts;

ix) the defendants and co-schemers would and did cause their salesmen to falsely represent that a specific "homesite" lot being offered was particularly valuable, was located in an especially "choice" area, and was generally a more desirable purchase than other "homesite" lots in the subdivision, whereas the location of a specific "homesite" lot was completely irrelevent since none of the "homesite" lots could be built upon, because they are without utilities and the only possible value a "homesite" lot might possess is to be used to exchange for a lot in the company's "building area" if a lot in the "building area" is available, as is explained in paragraph 18(o) below;

x) the defendants and co-schemers would and did cause their salesmen to falsely represent that the "choice" lots would be imminently sold out;

xi) the defendants and co-schemers would and did cause their salesmen to create a false impression of general agreement among everyone attending the dinner as to the immediate desirability of purchasing lots at Rio Rancho

Estates by training the salesmen to jump up and loudly and conspicuously to call "holds" on particular lots in order to falsely suggest that many sales were being made;

xii) the defendants and co-schemers would and did cause their salesmen to falsely represent that a "commercial" or "multi-dwelling" lot was a particularly valuable investment which would not only greatly appreciate in value but would also be income-producing, even though defendants and co-schemers at all times knew that the commercial and multi-dwelling lots could not be built upon because they are without utilities; and that such lots could not be exchanged for a lot with utilities and that there was no right of inspection or cancellation for such lots;

xiii) the defendants and co-schemers would and did cause their salesmen to falsely equate the price set by defendants for the lots with their value in the open market and to falsely represent that the lots should be immediately purchased at present prices because the lots were rapidly increasing in value;

xiv) the defendants and co-schemers would and did cause their salesmen to support claims as to the rapidly rising value of lots at Rio Rancho Estates by emphasizing the increases in sales prices of the lots which were arbitrarily declared from time to time by the defendants, without explaining that these arbitrary price increases bore no relationship whatever either to the cost of the land to the defendants or to any increase in resale market value, since there was no resale market and hence no real market value, and these arbitrary price increases bore no real relation to "value" of any kind as that term is normally understood, and these price increases had been planned and declared by the defendants primarily so that they could be used to create a totally false impression as to rapidly rising market values of the lots sold;

xv) the defendants and co-schemers would and did cause their salesmen to represent to the persons to be defrauded that the "six month cancellation and refund privilege" guaranteed the return of all moneys, and this representation was made without disclosing to the persons to be defrauded that the costs involved to the persons to be defrauded in exercising this "refund privilege" would in most instances exceed the money paid on the contract during the first six months;

xvi) the defendants and co-schemers would and did require the purchaser to visit the subdivision in order to cancel and obtain a refund, and this was done for two purposes, (a) to discourage by reasons of inconvenience and expense many persons who were considering cancellation from seeking to obtain a refund, and (b) so that defendants and co-schemers could organize and operate carefully controlled and supervised tours during which they could and would both discourage cancellations and sell additional land to the persons on these tours by subjecting them to further and similar fraudulent sales presentations, and by carefully supervising and controlling the movements and activities of the persons on these tours so as to prevent them from learning the actual condition of the real-estate market in and around Albuquerque;

xvii) the defendants and co-schemers would and did cause a movie to be used at their sales dinners called "Albuquerque's West Side Story" which movie purports to be produced by a civic organization and which emphasizes Rio Rancho Estates; and the defendants and co-schemers would and did cause this movie to be used without informing the persons to be defrauded that the movie had been produced and in large part paid for by AMREP and RIO RANCHO, and that prior to its use at sales dinners the movie had been significantly edited by the defendants and co-schemers;

xviii) the defendants and co-schemers would and did cause their sales dinner presentations to be organized in such a way as to carefully synchronize the use of written materials, movies, podium speeches and individual salesmen, who were strategically located at each table and assigned to small groups of potential purchasers; and it was this over-all synchronized presentation, and not merely its constituent parts, that was designed to and did deceive the persons to be defrauded concerning the quality of the land as a financial investment and other matters;

xix) the defendants were required to submit some of the written material, most notably the

Federal "Property Reports" and New York State "Offering Statements" (hereinafter referred to as "Reports") to Government offices for review prior to use; however, this review did not, as the defendants and co-schemers well knew, constitute approval or verification by the Government offices that the statements contained in these Reports were true, reasonably complete, and not misleading or fraudulent; and in fact, as the defendants and co-schemers well knew, it was at all times a crime to represent or suggest that Government offices had approved or verified the truth or non-fraudulent nature of anything contained in these Reports both of which were required to be given to a purchaser prior to the signing of a contract;

xx) the defendants and co-schemers caused these sales dinner presentations to be organized and conducted so as not to call attention to the Reports; and the defendants and co-schemers caused salesmen to be trained to discourage anyone who noticed the Reports from reading them, and to give the Reports to the persons to be defrauded, if the Reports were given at all, concealed amongst promotional brochures;

xxi) the defendants and co-schemers would and did cause the information in the Reports and sales contracts which was significant and material to an individual's decision to purchase lots at Rio Rancho Estates to be ambiguous, incomplete, inaccurate, and rms

incomprehensible to a person of ordinary experience and understanding particularly as the information related to, among other things, the suitability of the lots as "homesites" and "commercial" lots; the availability of water; the company's obligation to provide water, utilities, and other customary amenities to the lots sold; the "exchange privilege"; and the availability and feasibility of providing water and utilities to the lots sold and offered for sale;

xxii) the defendants and co-schemers would and did cause the sales dinner presentations to be timed and planned in such a way as to make it virtually impossible for the persons to be defrauded to read and understand the contents of the purchase contracts prior to signing them;

xxiii) the defendant and co-schemers would and did cause their salesmen to prevent potential customers from removing any purchase contracts, Reports, or promotional material from the room where the sales dinner was held unless a sale had already been made to the purchaser;

xxiv) the defendants were required to file with the State of New York copies of advertising, promotional films, and literature used at dinner presentations in the State of New York although, again, this filing did not, as defendants and co-schemers well knew, constitute approval or verification by the State of New York that statements contained in the advertising and promotional material were true, reasonably complete, and not misleading or fraudulent; and, in fact, as defendants and co-schemers well knew it was at all times a crime to represent or suggest that New York State had approved or verified the truth or non-fraudulent nature of anything contained in advertising and promotional material submitted for filing;

xxv) the defendants and co-schemers would and did cause their salesmen to falsely represent and suggest to the persons to be defrauded that New York State had not only approved and verified the truth and accuracy of the contents of these materials, but had also approved the oral presentations which in fact had never been submitted to or reviewed by New York officials;

xxvi) the defendants and co-schemers, as set forth above, devised and designed their over-all sales campaign in order to sell the land as a sound financial investment, and up until 1972 the written advertising materials and movies, as well as the oral presentations, blatently emphasized this investment theme; however in or about 1972, the defendants came to fear that they might have increasing difficulties with state and federal regulatory agencies if the written materials continued to blatantly emphasize the sale of "homesite" and "commercial" lots as a sound financial investment and accordingly, in or about 1972, it became part of the scheme and artifice to defraud that the defendants and co-schemers would and did review and revise their advertising materials and promotional movies so as to shade and qualify the language used concerning investment without, at the same time, weakening the real impact and effect of these materials as an inducement to financial investment, and without in any way inhibiting the sales dinner presentations from continuing to function as an over-all fraudulent inducement to purchase lots at Rio Rancho Estates for financial investment;

xxvii) the defendants and co-schemers would not and did not give reasonably complete and truthful information to salesmen and employees about the lots being sold, the assurance of water and other utilities, the character of the lots being sold as a sound financial investment, and other matters; and the salesmen and employees were, in fact, often misled themselves as to these and other matters by the defendants' training program and promotional material; and this lack of knowledge of complete and truthful information on the part of many salesmen and employees would and did further contribute to the misleading and fraudulent representations caused to be made to the persons to be defrauded;

xxviii) the defendants and co-schemers would and did operate some "investment seminars" separate from the sales dinners and designed to accomplish the same goals by employing many of the same fraudulent and misleading techniques;

xxix) the defendants and co-schemers would and did design and devise and cause letters and promotional material to be sent to the persons to be defrauded who purchased lots in order to induce them to continue to make payments on their lots and to purchase additional lots and to lull them into a false sense of security by advising them, among other things, that their "investment" was rapidly increasing in value;

FRAUDULENT AND MISLEADING REPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS

(h) From 1961 and at all subsequent times material herein the defendants and co-schemers, as the over-all thrust of their sales campaign, would and did induce the persons to be defrauded to purchase lots at Rio Rancho Estates as a result of false and fraudulent pretenses, representations and material omissions which were designed to mislead the persons to be defrauded to believe that the purchase of these lots was a sound, virtually risk-free financial investment which could be resold at substantial profits.

(i) The defendants and co-schemers as a part of their sales campaign would and did make and cause to be made the following representations, among others, in promotional material, oral sales presentations, photographs and movies:

> "The history of land prices all around Rio Rancho Estates as well as Albuquerque proper over the past 20 years show prices doubling and redoubling again and again every few years."
>
> "In this booming resort area, where it has been typical for land prices to jump 200%, 300% even more in a few short years, you can control choice acreage worth thousands of dollars right now.....all you need is a small deposit."
>
> "In the past 20 years, land prices in the Albuquerque area have increased at a rapid pace, averaging about 25% per year but in many cases accelerating as much as 300 to 400% in a given year."
>
> "In the past when American Realty and Petroleum Corporation [AMREP] announced plans for a new community, prices on adjacent properties almost instantly jumped 100 to 300%."
>
> "Land values in the vicinity of Albuquerque have consistently risen by an average of more than 25% per year since 1941 -- and may climb even faster."
>
> "The most significant feature of RIO RANCHO ESTATES is the fact that it is in a region characterized by a prolonged rise in real estate values."

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> [The purchase of lots at Rio Rancho Estates provide] "the chance of [illegible] future [illegible] relatively [illegible] speculative investment in an area where land values have shown a consistent tendency to steadily climb. It is a demonstrable fact that land prices in general in the Albuquerque area have increased 20, 30, even 50 times or more in the past 20 years."
>
> "In general, it can be shown that land values in this area have been increasing at the average rate of 25% per year for the last thirty years! The above fact has profound implications for anyone who has ever invested money in any kind of enterprise from which he hoped to make a profit."

and statements of similar purport, thereby intending to mislead the persons to be defrauded to believe that the increases in land values in the Albuquerque metropolitan area were a valid basis of comparison to, and were indicative of, the increase in land values for lots at Rio Rancho Estates, and that the persons to be defrauded had every reason to expect the resale market price of a lot at Rio Rancho Estates to increase at a similar rate.

(j) the defendants and co-schemers as a part of and in the course of their sales campaign would and did make and cause to be made in written promotional material, oral sales presentations, photographs, slides and movie films, the following additional representations, among others:

> an "investment" in lots at Rio Rancho Estates will yield a higher return to the persons to be defrauded than investing in stocks, bonds, pension funds, insurance or savings accounts;
>
> an "investment" in lots at Rio Rancho Estates will assure the persons to be defrauded "a hedge against inflation", "financial security" and "security for the Golden Years ahead"
>
> "the day to day facts of inflation are so grim and foreboding you owe it to [illegible] there [RIO RANCHO ESTATES] as a potentially protective investment for your rapidly eroding savings."

> an "investment" in lots at Rio Rancho Estates was "one of the surest and safest ways to make handsome returns on your investment."
>
> "How to use the least amount of money to make the largest possible gains in land investment."
>
> "only our low mark-up, large-volume policy makes such an outstanding land bargain possible."
>
> "we believe that Rio Rancho represents potentially one of the most profitable investments anywhere in the nation"
>
> "we feel quite safe in saying: if you acquire land holdings now at Rio Rancho Estates while our prices are still low, you have every right to expect that your land should rise substantially in value over the coming years"
>
> "you may resell all or part of your property anytime you wish."
>
> "your investment has resale value"
>
> "while for really spacious living, or for selling off part later at an anticipated profit, many homesite purchasers are choosing full-acre sites"
>
> "Albuquerque's growth offers you an opportunity to make a great deal of money."
>
> "huge profits...have been made on the sale and resale of real estate in and about the City of Albuquerque over the past several years",

and statement of similar purport thereby intending to mislead the persons to be defrauded to believe that the purchase of lots at Rio Rancho Estates was a safe, sound and risk-free financial investment, and that the lots could be resold at substantial profits, thus assuring the persons to be defrauded financial security for their retirement, and other financial objectives.

(k) At the same time that the aforesaid statements, pretenses and representations set forth in paragraphs 18(i) and (j) above, were being made, the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following material statements of fact which defendants knew and believed and which were necessary in order to make the statements that were made, in the light of the circumstances under which they were made, not misleading, false and fraudulent:

i) the overwhelming majority of the persons to be defrauded would not be able to resell their land at a profit, or even at cost, within any foreseeable future;

ii) there had been virtually no resale market for the lots at Rio Rancho Estates throughout the entire 14 year history of this scheme and artifice to defraud;

iii) the overwhelming majority of persons wishing to resell their lots had not been able to sell them at all;

iv) the Multiple Listing Service of the Albuquerque Board of Realtors discouraged lot owners from listing lots at Rio Rancho Estates for resale because there was no real market for the land;

v) the defendants and co-schemers had purchased 54,000 acres of the land in 1961 for $178 per acre and had purchased an additional 31,000 acres for $180 per acre in the period from 1969 through 1971, and had already marked the land up as much as several thousand percent;

vi) from 1969 to 1971 the defendants and co-schemers were able to purchase the major portion of the remaining acres of their development, for an average price of $180 per acre, for a total increase in price over ten years of approximately 1%;

vii) in 1971 the defendant Rio Rancho made an application to purchase approximately 3,500 acres of state-owned land within the boundaries of Rio Rancho Estates for $165 per acre which offer was based upon an appraisal prepared for and submitted by defendant RIO RANCHO estimating the market value of this state-owned property at $165 per acre which price was less than the amount the defendants had paid for virtually identical contiguous land twelve years earlier; the state appraised this land at $225 per acre which price the defendants rejected as too high;

viii) the defendants and co-schemers knew and believed that the overwhelming majority of lot purchasers did not intend to and would not move to Rio Rancho Estates, and would also be attempting to resell their land, and that each of the persons to be defrauded when he wanted to sell his land would be in competition with most of the other purchasers;

ix) other "developers" in the general vicinity of Albuquerque had subdivided and were selling hundreds of thousands of acres to many thousands of persons who would not move to the subdivisions, but who would be attempting to resell their land, and that this would create additional competition when the persons to be defrauded attempted to resell their lots;

x) the price of the lots did not reflect their value in the open market but reflected for the most part the exorbitant promotional costs necessary to sell the land;

xi) the defendants and co-schemers knew and believed that lots at Rio Rancho Estates could not be sold without the use of the selling techniques set forth in paragraph 18(g) herein and the fraudulent and misleading representations and omissions of material facts set forth in paragraphs 18(j) through (q) herein.

(l) The defendants and co-schemers as a part of and in the course of their sales campaign would and did cause to be made in witten promotional material, oral sales presentations, photographs, slides, and movies, the following additional representations, among others:

> Rio Rancho Estates is located directly in the path of Albuquerque's growth;
>
> "What makes RIO RANCHO ESTATES a particularly fertile field for investment is its unique geographical location. It lies directly in the path of Albuquerque's inevitable future expansion. With the natural mountain barrier to the east and Government-appropriated land to the south, the most logical direction for major expansion is toward RIO RANCHO ESTATES! This alone would tend to assure the continued rise in value of land purchased at RIO RANCHO ESTATES."
>
> Albuquerque can only grow in the direction of Rio Rancho Estates;
>
> Albuquerque is "bursting at the seams";
>
> Albuquerque is experiencing a tremendous population explosion resulting in an increased demand for land, and an increased demand for "homesites" at Rio Rancho Estates;
>
> "with the population of Albuquerque expected to double and redouble every ten years with land reflecting an upward trend....newcomers are being forced by the law of supply and demand to pay higher and higher prices for choice homesite land"
>
> "Rio Rancho's unique location assures the continued rise in value of its land based upon such population growth"
>
> building land in and around Albuquerque is scarce and will be exhausted within two years;
>
> as the demand for land increases "homesite" lots at Rio Rancho Estates are rapidly increasing in value;
>
> "Now with Albuquerque's population predicted to almost double once again by 1980 or so--one does not have to be an expert to predict that land prices in our area should continue to reflect increasing population pressures...and perhaps at an even livelier pace as population pushes more and more into the growing Northwest Mesa neighborhood where Rio Rancho Estates is located!"

> "Many people at Albuquerque who are familiar with local real estate values and know the direction that Albuquerque's growing population must take in its search for homesites, are going out of their way to make monthly payments on 2 to 10 acre tracts...larger holdings which could lead to a sizeable retirement 'nest egg' if land values continues to double and redouble as they have over the recent past."

and statements of similar purport thereby intending to mislead the persons to be defrauded to believe that any growth of Albuquerque must necessarily be to and through Rio Rancho Estates, that within the foreseeable future Rio Rancho Estates was virtually certain to be absorbed and become a part of the City of Albuquerque, and that the local demand for lots from people who already lived in or who decided to move to the City of Albuquerque would inevitably create a demand for lots at Rio Rancho Estates and this demand would assure a brisk and profitable resale market for these "homesite" lots and a demand for "commercial" lots.

(m) At the same time that the aforesaid statements and representations set forth in paragraphs 18(i), (j) and (l) above were being made, the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following material statements of fact which defendants and co-schemers knew and believed and which were necessary in order to make the statements that were made, in the light of the circumstances under which they were made, not misleading, false, and fraudulent:

i) all the material statements previously listed in paragraph 18(k) above;

ii) the growth of Albuquerque had not and would not have any significant effect on the demand for lots at Rio Rancho Estates;

iii) there was sufficient land in and closer to the City of Albuquerque than Rio Rancho

Estates to satisfy the most optimistic long-range growth projections for the City of Albuquerque;

iv) Albuquerque was not growing at an increasing rate, but at a declining rate of growth;

v) there was little or no local market in Albuquerque for the sale of lots at Rio Rancho Estates;

vi) the defendants and co-schemers did not believe that Albuquerque would grow to and through Rio Rancho Estates and/or that Rio Rancho Estates would be absorbed within the built up area of the City of Albuquerque within the foreseeable future, if ever, and furthermore they did not believe that more than 5% of the purchasers would move to Rio Rancho Estates, or that Rio Rancho Estates would become fully developed at any time less than 200 years from now, if ever,

vii) Rio Rancho Estates was not the necessary or only possible direction in which Albuquerque could be expected to grow;

viii) the defendants and co-schemers received a report in 1966 from a land planning firm retained by them which indicated that the growth of Albuquerque would have no appreciable effect on the demand for lots at Rio Rancho Estates in the foreseeable future;

(n) From in or about 1961 up to and including the date of the filing of this indictment the defendants and co-schemers would and did hold out defendants AMREP and RIO RANCHO as "developers" and "community planners" who had a "master-plan" for the development of the lots sold and offered for sale at Rio Rancho Estates and the defendants and co-schemers would and did represent and cause the lots at Rio Rancho Estates to be sold and offered for sale as suitable and useable as "homesites" and for commercial purposes at prices which were to include water, utilities and other customary amenities and that these "homesite" and "commercial" lots were in a "master-planned community" of defendants AMREP and RIO RANCHO all of which was false, fraudulent and misleading as defendants and co-schemers well knew.

(o) At the same time that the aforesaid statements and representations in the preceding paragraph were being made, the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following material statements of fact which defendants and co-schemers knew and believed and which were necessary in order to make the statements that were made, in the light of the circumstances under which they were made, not misleading, false, and fraudulent:

i) the principal business of defendants AMREP and RIO RANCHO was to subdivide large tracts of land and to sell unimproved lots;

ii) the defendants and co-schemers had not and were not improving with water, utilities and other customary amenities the "homesite" and "commercial" lots being sold and offered for sale;

iii) the defendants' "master-plan" in no way assured that each individual "homesite" and "commercial" lot sold and offered for sale would ever become part of a developed community, nor did defendants intend to or consider themselves obligated to develop the individual "homesite" and "commercial" lots sold and offered for sale contrary to what was represented and suggested by the films, photographs, brochures, tours and descriptions of the small developed portion of the company-owned "building area";

iv) the defendants and co-schemers were selling the land in such a way as to prevent or indefinitely postpone its development as a fully developed "master-planned community" since the defendants and co-schemers knew and believed that most purchasers would not build but would hold their lots for resale at a profit, that there was no resale market and no reasonable expectation of a profitable resale market in the future, and that the overwhelming majority of the lots were virtually certain to lie empty and undeveloped for the indefinite future;

v) the lots sold and offered for sale could not be used as "homesites" or for commercial purposes and there was no other use to which this land could be put;

vi) the defendants and co-schemers did not believe and had no reason to believe that the "commercial" and "multi-dwelling" lots sold and offered for sale would be at any time in the foreseeable future surrounded by the type of contiguous development necessary in order for a lot to have commercial use;

vii) the lots sold and offered for sale were arid desert lots, without water and utilities and improved only by dirt roads;

viii) in the overwhelming majority of cases utilities were many miles away from the lots sold and offered for sale;

ix) the extension policies of the utility companies precluded the overwhelming majority of the persons to be defrauded from obtaining utilities for their lots;

x) the persons to be defrauded would not be able to build on the lots they purchased;

xi) it was not practical or economically feasible for the persons to be defrauded to drill wells for water or to extend utilities to their lots;

xii) if the persons to be defrauded were able to obtain utilities, the persons to be defrauded, not the defendants, would have to bear the cost of extending utilities to their lots;

xiii) the defendants and co-schemers were only placing utilities in company-owned "building areas";

xiv) lots in the "building area" which had utilities were only available by means of the "exchange privilege" to "homesite" owners who were ready to build a home;

xv) only a single half-acre "homesite" lot could be exchanged for a lot in the "building area";

xvi) the "exchange privilege" usually resulted in added cost to the persons to be defrauded for a smaller piece of land and required the persons to be defrauded to retain any land in excess of a single half-acre;

xvii) there was no right to exchange a "commercial" or "multi-dwelling" lot for a lot with utilities in the "building area";

xviii) there was no right to exchange a "ranchette" for a lot or lots in the "building area";

xix) utilities were only being placed in company owned "building areas" based upon demand;

xx) the defendants and co-schemers knew and believed that the demand for lots in the "building areas" would be limited and did not set aside sufficient land in the company-owned "building areas" so that each "homesite" lot sold could be exchanged for a lot with utilities;

xxi) although the defendants and co-schemers represented that their so-called "master-plan" made provision for schools, churches, shopping centers, swimming pools, and many other recreational and community facilities to be located throughout the entire subdivision, they were not, in reality committing themselves to provide any such facilities at any time in the future; and furthermore the defendants had made provisions to shift to the lot purchasers the cost of maintaining the few such facilities which had been built in the small company-owned "building area."

(p) the defendants and co-schemers as a part of and in the course of their sales campaign would and did make and cause to be made in photographs, slides, films, promotional materials and sales presentations the following representations among others:

> "Water. Water is the key to Southwest growth. Thanks to our dream location, with 3 miles of frontage right on the river ... and every inch of property within the Rio Grande Basin itself ... We can tap all the ground water we need to make living really attractive for you at Rio Rancho Estates."

> "WATER -- Even though water is sometimes a problem in the Southwest, its good to know that Albuquerque is abundantly supplied. At Rio Rancho we have an underground system with enough water for a community many times our present size. And if the community should grow beyond our estimates in the next few years, all we have to do is sink another well and draw more water from the vast underground streams below, because most of Rio Rancho is located in the water-rich Rio Grande Basin.
>
> But that's not all. Recently, the Bureau of Reclamation opened the valves marking the completion of the $84.5 million San Juan-Chama project which brings water from Colorado River tributaries beneath mountains under the Continental Divide into the Rio Grande. The vastly increased water supply for Albuquerque furnishes an additional basis for industry to move here."

> "The completion of the San Juan-Chama Diversion Project, virtually guarantees the Albuquerque-Rio Rancho area a water supply for at least 100 years."

> "Rio Rancho Estates is blessed with an abundance of soft, delicious water -- more than enough to fill every community need -- which runs through one of the finest water systems in the entire Southwest."

and statements of similar purport thereby intending to mislead the persons to be defrauded to believe that water could not possibly be a problem with respect to the development of Rio Rancho Estates which was false, fraudulent, deceitful and misleading as defendants and co-schemers well knew and believed.

(q) At the same time that the aforesaid statements and representations in paragraph 18(p) were being made the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following statements of fact which defendants and co-schemers knew and believed and which were necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, false and fraudulent:

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i) the defendants can not tap all the ground water they need nor can they simply sink another well and draw more water;

ii) the defendants must own water rights before they can drill for water and the transfer of a water right must be approved by the State Engineer of New Mexico;

iii) the defendants do not presently own sufficient water rights to fully or even substantially develop Rio Rancho Estates;

iv) the defendants have no legal assurances that they can acquire sufficient water rights to support a fully or even substantially developed subdivision at Rio Rancho Estates;

v) the San Juan-Chama Diversion Project does not guarantee Rio Rancho any water much less a water supply for 100 years;

vi) the defendants and co-schemers requested an allotment of water from the San Juan-Chama Diversion Project for Rio Rancho Estates and did not receive an allotment;

vii) the fact that the City of Albuquerque has an abundant supply of water does not in any way guarantee water for Rio Rancho Estates;

viii) the City of Albuquerque does not provide water to Rio Rancho Estates;

ix) the defendants only intend to provide central water, if at all, to the company-owned "building areas";

x) the depth to water for the lots sold and offered for sale ranges from 400 to 1,480 feet;

xi) it is not practical or economically feasible for an individual lot owner to drill a well;

xii) the cost of drilling a well including casing and equipping, but not including the cost of pumping, presently is $10 to $18 a foot;

xiii) the persons to be defrauded can not reasonably obtain water for the lots sold and offered for sale;

xiv) under present state regulations in New Mexico a "homesite" owner can not drill for water and have a septic tank unless the lot is at least three-quarters of an acre in size and the overwhelming majority of "homesite" lots at Rio Rancho Estates are one-half acre;

xv) the purchase contracts for "commercial", "multi-dwelling" lots and "ranchettes" do not obligate the defendants to provide water and utilities to these lots nor do they permit an exchange of these lots into the building area;

xvi) contrary to such assertions as those made in paragraph 18(p) above, among others, the defendants and co-schemers do not know and are not in a position to represent to the persons to be defrauded that they can and will provide water to the lots sold and offered for sale and/or that they can and will be able to provide an exchange lot with water for each lot sold and offered for sale.

19. On or about the dates hereinafter set forth in the Southern District of New York, HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ASI the defendants, for the purpose of executing

the scheme and artifice to defraud as alleged in paragraphs 1 through 18 hereinabove, and attempting to do so, unlawfully, wilfully and knowingly did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the directions thereon matter to be delivered by the United States Postal Service, as more particularly set forth below:

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
1	5/9/75	Rio Rancho 3900 Southern Blvd, Rio Rancho, New Mexico 87124	Samuel A. Kaufman 185 East 162 St. Bronx, N.Y. 10451	Letter
2	1/12/71	Rio Rancho P.O. Box 1516 Albuquerque, New Mexico	Mr&Mrs. Ernest Feig 585 West End Ave. N.Y., N.Y. 10024	Letter
3	9/18/72	Ethel&Samuel Louis 321 Boone St. Piqua, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
4	8/8/73	Clarence A. Thorne Fallon, Nevada	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
5	5/20/71	Mr.&Mrs.Clymer 600 Linderson- way, Tumwater, Washington	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
6	12/15/72	ATC RealtyCorp. 1790 Broadway New York, N.Y.	Mrs. Lillian Sender 964 East 102 St. Brooklyn, N.Y. 11236	Letter
7	6/20/75	Austin&Annette Oppedisano 6 Fourth St. Farmingdale, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
8	6/25/75	Mr.&Mrs.Minch 1953 Rockford Rd. Indianapolis, Indiana	Chemical Bank P.O. Box 5357 Church Street Station N.Y., N.Y.	Payment

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COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
9	5/17/72	ATC Realty Corp. 16 West 61 St. New York, N.Y.	Leslie&Joyce Eryes 2545 East 64 St. Brooklyn, N.Y.	Letter
10	11/18/71	John P.&Dorothea Paulson, 254 Collfield Staten Island, N.Y., N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
11	8/21/72	Donald&Mildred Ferrie, 43 Lafayette Sea Cliff, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
12	9/25/73	Bernard&Patricia Billech 3543 Arden Blvd. Youngstown, Ohio 44511	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
13	4/71	Mr.&Mrs.Ogg 1356 Connecticut Ave. Bowling Green, Ohio 43402	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
14	10/9/75	Jeanne Norris 126 Park Street West Pittston, Pennsylvania	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
15	9/15/75	Milton&Ida Freundlich 3101 Ocean Pkwy. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
16	6/19/75	David Jones 140-21 Queens Blvd. Jamaica, N.Y. 11435	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
17	10/28/71	Robert&Constance Accinni 61 Oceanside Rd. Rockville Center, New York 11570	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
18	3/73	Glory Banks 155 East 38 St. New York, N.Y. 10016	Chemical Bank P. O. Box 5257 Church Street Station N.Y., N.Y.	Payment
19	9/12/72	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Hilda Morse 173 Riverside Drive New York, N.Y. 10024	Letter

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COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
20	9/15/75	Finnen, DelCampe & Camiano 917 Sunrise Ave. Bellmore, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
21	5/22/75	Vincent&Luciano Porto, 48-15 44 Street Woodside, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
22	5/15/74	James Rovito 2848 Colonial Ridge Ct. Cinn. Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
23	11/9/71	Morris&Florence Gusewsky 600 Rincon De Romos, Rio Rancho New Mexico	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
24	6/4/71	Gustave&Joanna Mols, 4712 La Contara Ct. Rio Rancho New Mexico	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
25	10/10/75	Antonio&Olive Reyes-Guerra 50 Winter Hill Rd. Tuckahoe, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
26	8/10/73	Riley Bryan Route 1 Colon, Michigan	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
27	1/11/72	Elizabeth Raimann 651 No. Terrace Ave., Mt. Vernon, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
28	9/18/75	Max&Blanche Glass 1085 East 22 St. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

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COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
29	9/23/75	Billy Sisco Box 200 Cold Camp Rd. Colorado Spring, Colo.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
30	10/9/75	Carl&Neva Falk 186 Paul Court Hillsdale, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y, N.Y.	Payment
31	5/5/71	Louis&Sylvia Grifo 25-36 73 Street Jackson Heights	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
32	7/2/73	Gary Kelp Blackberry Lane RD1, Box 185 Malvern, Pa. 19355	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
33	11/28/72	Aldo&Ruth Petrillo 249 Long Pond Dr. South Yarmouth, Mass.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
34	5/12/72	Mr.&Mrs.D.Butler 48 Hoffman Lane Blauvelt, N.Y. 10913	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
35	2/24/72	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Mr&Mrs. Orland Credintino 311 Elwood Ave. Hawthorne, N.Y. 10532	Letter
36	7/1/75	Steven&Louisa Adler 133 Governors Rd. Lakewood, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
37	10/11/72	ATC Realty Corp. 16 West 61 St. New York,N.Y.	Mr&Mrs. James Di Domenico 1465 West 5 St. Brooklyn, N.Y.	Letter
38	8/16/74	Richard W. Gray 55 Lawrence Pl. Orchard Park N.Y.	Chemical Bank P.O. Box 5257 N.Y., N.Y.	Payment
39	5/74	John&Arlene Duffy 465 Colon Ave. Staten Island, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
40	4/19/72	Rio Rancho 3900 Southern Blvd. Rio Rancho, New Mexico 87124	[illegible]ko Dubovich 970 North Serrano Ave. Los Angeles, Calif., c.c. AMREP Realty Corp.	Letter
41	4/4/72	[illegible] Realty Corp. 16 [illegible] Street New York, N.Y.	[illegible] [illegible] Ave. [illegible]ville, N.J.	Letter
42	6/3/75	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	[illegible] Christiano 2 Rock Ridge Rd. Port Chester, N.Y. 10573	Letter
43	2/10/75	[illegible] Sport [illegible] 175 [illegible] Rd. Cleveland, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
44	[illegible]	Robert O'Brien Sport [illegible] 50 [illegible] Place Torrington, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
45	2/72	A. [illegible] 1545 Kennedy Blvd. Jersey City, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
46	6/16/75	Harry [illegible] Sch[illegible] 121 [illegible]tand Ave. Sayville, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
47	6/13/75	Sylvester Mizel[illegible] P.O. Box 110 Greenwich, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
48	11/2[illegible]/75	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico [illegible]	Ms. Constance M. Paterno 707 Van Nest Avenue Bronx, N.Y.	Letter

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COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
49	1/24/73	Mr.&Mrs. Browser 3688 Flora Lane Oceanside, Long Island	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
50	1/2/75	ATC Realty Corp. 1790 Broadway N.Y., N.Y. 10019	Mr.&Mrs. Myer Pepkin 2285 Bragg Street Brooklyn, New York	Letter
51	10/11/72	Mr.&Mrs. Seil 48 Ferndale Blvd. Islip, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
52	3/18/71	Mr.&Mrs. Miller 3315 Nostrand Ave. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
53	6/20/75	Robert G. Wagner Route 3 Bucyrus, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
54	10/28/74	Mr.&Mrs. Switt P.O. Box 182 Browns Mills, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
55	1/8/71	Robert Gaudette 84-50 127 Street Kew Gardens, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
56	7/31/72	Mr.&Mrs. Baczynski 210 St. Benedict Lane Florissant, Missouri	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
57	7/75	Mr.&Mrs. Slocum 301 Ridge Rd. Oriskany, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
58	8/4/72	Americo G. Passaretti 193 Gibson Ave. Brentwood, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
59	2/19/74	David Ramirez 94-31 46 Ave. Elmhurst, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
60	4/19/73	Mr.&Mrs. Martinez 213 West 53 St. N.Y., N.Y.	Rio Rancho Estates 3900 Southern Blvd. Rio Rancho, New Mexico	Letter
61	1/24/74	Ellen Eilhauer 32-47 42 St. Long Island City, N.Y.	Leonard Geller ATC Realty Corp. 1790 Broadway N.Y., N.Y.	Letter
62	2/1/73	AMREP Corporation 16 West 61 Street N.Y., N.Y. 10023	Mr.&Mrs. John D. Schneider 450 King Street Staten Island, N.Y.	Letter
63	2/23/73	Secretary of State of the State of N.Y.	Amrep Corp. 16 West 61 St. N.Y., N.Y.	Letter
64	12/30/73	Edward Baker P.O. Box 75 Shady, N.Y.	Dan Monaco ATC Realty Corp. 16 West 61 St. N.Y., N.Y.	Letter
65	9/17/73	Secretary of State of the State of N.Y.	AMREP Corporation 16 West 61 Street N.Y., N.Y.	Letter
66	6/9/75	Mr.&Mrs. Miller 15 Chestnut Hill Drive Toms River, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
67	7/3/75	Mr.&Mrs. Hampe Box 473A Middlefield, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
68	6/28/72	ATC Realty Corp. 16 West 61 St. New York, N.Y.	Mr.&Mrs. Wilbur Pack 220-01 138 Rd. Springfield Gardens, N.Y.	Letter
69	3/6/73	ATC Realty Corp. 1790 Broadway N.Y., N.Y.	Mr.&Mrs. Leon Schwartz 1189 East 56 St. Brooklyn, N. Y.	Letter
70	7/8/75	Mr.&Mrs. Joseph Schiller 25 Tulip St. Cranford, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

(Title 18, United States Code, Sections 1341 and 2.)

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COUNTS SEVENTY-ONE THROUGH EIGHTY

The Grand Jury further charges:

1. From in or about April, 1969, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC and co-schemers, all of whom were at all times material to this indictment "developers" and "agents" as defined in Title 15, United States Code, Section 1701(4)(5), would and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots in Rio Rancho Estates, unlawfully, wilfully and knowingly, employ a device, scheme and artifice to defraud; and engage in transactions, practices and courses of business which operated and would and did operate as a fraud and deceit upon the persons to be defrauded to whom said defendants directly and indirectly would and did attempt to and did sell and offer to sell lots in Rio Rancho Estates.

2. The allegations contained in paragraphs 14 through 18 of Counts One through Seventy of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC committed the offenses charged in paragraph 1 of Counts Seventy-One through Eighty.

3. Among the other means by which the defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, and co-schemers would and did commit the

offenses charged in paragraph 1 of these Counts were the following:

a) the defendants and co-schemers would and did cause telephone calls to be made to the persons to be defrauded to invite the persons to be defrauded to sales dinners; to confirm the attendance of the persons to be defrauded at sales dinners; to make appointments to visit the persons to be defrauded in their homes; and to confirm information regarding sales that were made at sales dinners and in the homes of the persons to be defrauded;

(b) the defendants and co-schemers would and did cause the purchase of lots at Rio Rancho Estates to be advertised on radio and television for the purpose of having the persons to be defrauded contact the defendants by mail and telephone so that the defendants and co-schemers could make a sales presentation to the persons to be defrauded.

4. On or about the dates hereinafter set forth in Counts Seventy-One through Eighty in the Southern District of New York, and elsewhere, defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, unlawfully, wilfully and knowingly did use and cause to be used the means and instruments of transportation and communication in interstate commerce pursuant to and in furtherance of the offenses alleged in paragraph 1 of these Counts as hereinafter set forth:

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COUNT	DATE	MEANS AND INSTRUMENT
71	November 22, 1974	WOR-TV
72	November 18, 1974	WPIX-TV
73	November 25, 1974	WNEW-TV
74	November 23, 1974	WABC-TV
75	March 25, 1975	WCBS-TV
76	March 28, 1975	WNBC-TV
77	March 26, 1973	WINS-Radio
78	April 3, 1973	WHN-Radio
79	July 6, 1973	WCBS-Radio
80	April 7, 1972	Telephone

(Title 15, United States Code, Section 1703(a) and Title 18, United States Code, Section 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

v. : NOTICE OF MOTION

AMREP CORPORATION, et al., : 75 Cr. 1023 (CMM)

Defendants. : 74-0906

PLEASE TAKE NOTICE that upon the annexed affidavits of George G. Gallantz, sworn to January 23, 1976 and Edward B. Winslow, sworn to January 22, 1976, the indictment in this case and all prior proceedings, defendant Amrep Corporation will move this Court before the Honorable Charles M. Metzner, United States District Judge, Southern District of New York, at the Courthouse in Foley Square, New York, New York, on February 2, 1976 at 10:00 a.m. for an order pursuant to Rule 14, Federal Rules of Criminal Procedure, directing that the defendant Solomon H. Friend, be tried separately from the other defendants named in the indictment.

Dated: New York, New York
January 23, 1976

Yours, etc.

PROSKAUER ROSE GOETZ & MENDELSOHN

By George G. Gallantz
A Member of the Firm
Attorneys for Defendants Amrep
Corporation, Rio Rancho Estates,
Inc. and ATC Realty Corp.
300 Park Avenue
New York, New York 10022
(212) 593-9000

TO: HONORABLE THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

v. : **MOTION**

AMREP CORPORATION, et al., :

Defendants. : 75 Cr. 1023 (CMM)

- - - - - - - - - - - - - - - - -x

Defendant Amrep Corporation ("Amrep") moves for an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure directing that the defendant Solomon H. Friend be tried separately upon the ground that a joint trial of Amrep and its General Counsel will result in severe prejudice to one or the other or both.

Dated: New York, New York
January 23, 1976

Respectfully submitted,

PROSKAUER ROSE GOETZ & MENDELSOHN

By George G. Gallantz
A Member of the Firm
Attorneys for Defendants Amrep
Corporation, Rio Rancho Estates,
Inc. and ATC Realty Corp.
300 Park Avenue
New York, New York 10022
(212) 593-9000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------x

UNITED STATES OF AMERICA, :

v. : **AFFIDAVIT**

AMREP CORPORATION, et al., :

Defendants. :

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

GEORGE G. GALLANTZ, being duly sworn, deposes and says:

1. I am a member of the firm of Proskauer Rose Goetz & Mendelsohn, attorneys for the defendant Amrep Corporation (hereinafter "Amrep") and the other corporate defendants herein. I submit this affidavit in support of the motion for an order pursuant to Rule 14, Federal Rules of Criminal Procedure directing that the defendant, Solomon H. Friend, Amrep's General Counsel, be tried separately from the other defendants named in the indictment.

2. A severance is being sought because a joint trial would deprive Amrep of the legal assistance, knowledge and expertise of its General Counsel, and because it is apparent from Mr. Friend's Grand Jury testimony that, in an effort to exonerate himself, he will pursue a defense antagonistic to that of his client and will seek to offer evidence that is violative of the attorney-client privilege, the "work product" privilege, or both.

The Indictment in Brief

3. Although the forty-two page indictment is replete with minutiae apparently designed to appeal to the consumerism of the day, it charges in essence that commencing on or about January 1, 1961 the defendants "willfully and knowingly did devise and intend to devise a scheme and artifice to defraud and for obtaining money in excess of $200,000,000 . . ." by purchasing "the land comprising Rio Rancho Estates" for "approximately $17,850,000", subdividing it and selling lots "by means of high pressure sales techniques which involved a variety of false and fraudulent pretenses, representations, promises and means. . . ." (¶¶ 13, 15, 18(f))

Mr. Friend's Unique Position In The Councils Of The Defense

4. As appears from the annexed affidavit of Edward B. Winslow, Mr. Friend, an attorney with some twenty-seven years experience, who specialized in administrative law and trade regulation, was retained by Amrep to develop an in-house legal department. He became Amrep's Vice President and General Counsel in 1970, almost a decade after the "scheme" charged in the indictment allegedly originated. Among other things, the legal staff he organized assumed responsibility for compliance by Amrep with various federal and state regulations relating to the sale of subdivided land. In the course of his work for Amrep, Mr. Friend developed an expertise in land sales regulation and both lectured and wrote on the subject of land acquisition and development.

5. Following the commencement of the Grand Jury investigation in March, 1974 and for approximately nine months thereafter, Mr. Friend was intimately involved in virtually every phase of Amrep's defense including document production, strategy deliberations with co-counsel, briefing and debriefing of witnesses, motion practice and the like. It was not until late January, 1975 that Mr. Friend learned for the first time that he was a target of the investigation (see paragraph 8 below). On advice of his own counsel he then relinquished certain responsibilities in connection with Amrep's defense. However, as Amrep's General Counsel and because he was an indispensable source of information about the company and its activities, he continued to participate in the councils of the defense.

6. Amrep's need for its General Counsel's knowledge and expertise is even more vital now and at the trial than it was during the investigatory stage of this proceeding. Yet, unless a severance is granted, the government, by making Mr. Friend a target and by having him indicted, will have succeeded in converting this indispensable member of the defense team into Amrep's most dangerous adversary.

Mr. Friend's Defense And That Of Amrep
Will Be Conflicting And Irreconcilable

7. In its defense of the action, Amrep should be free, among other things, to establish that many of the claims of the indictment amount to little more than "seller's puff"; that its sales materials were regulated by federal and state agencies and that it relied in good faith on its in-house legal staff and its outside counsel to see to it that

all authorized sales techniques were lawful.

8. Mr. Friend's defense may be expected to be quite different. He is the only officer of Amrep who chose to waive his Fifth Amendment rights. He testified before the Grand Jury on eleven separate occasions, and his testimony makes clear that from the time he learned he was a target of the investigation, Mr. Friend's all-consuming objective has been to exonerate himself, even if the achievement of that objective results in the incrimination of others. As he put it:

> ". . . up until January I had no idea that was -- that I was a target in this case. I couldn't imagine it. It was beyond my comprehension."
> (Tr. 7/29/75 - Afternoon Session, p. 13, l. 12)
>
> "My life is going to be ruined if I am indicted. My family, my children, everything, for what?"
> (Tr. 7/29/75 - Afternoon Session, p. 33, l. 15)
>
> "I am here on trial for my life, and it is not nice . . . No game. It is my life."
> (Tr. 7/31/75 - Morning Session, p. 21, l. 21)

9. Based upon his testimony before the Grand Jury, Mr. Friend's defense can be summarized as follows:

a. He will seek to disassociate himself from Amrep's practices. For example, on the subject of customer complaints, he testified that in 1972:

> "Complaints were, so to speak, coming out of the woodwork. But, they were complaints that had been -- that were arising from sales that were made prior to the time that I joined the company."
> (Tr. 7/29/75 - Afternoon Session, p. 10, l. 5)

b. He will disclaim knowledge as to various matters claimed by the Government to be a part of the alleged "scheme". For example, on the subject of utilities, Mr. Friend gave the following testimony:

> "Q What was the provision for providing utilities for people that bought commercial and multiple dwelling lots?
>
> A From what I learned recently, none.
>
> Q How did you learn that?
>
> A When you subpoenaed --
>
> Q Who did you learn it from?
>
> A I learned it from Ted Schreier [an attorney on Amrep's legal staff]. When you issued a subpoena for all of those films, microfiches, I said to Ted, my God, what does she want with that. I haven't seen one of these God-damned contracts. I don't know when I saw one."
>
> (Tr. 10/21/75 - Afternoon Session, p. 60, l. 19)

c. Mr. Friend will emphasize that he did not make or control Amrep's business decisions. For example, on the subject of disciplining salesmen whose activities resulted in "a pattern" of customer complaints, he testified:

> "See, I wasn't the person who did that . . . I really wasn't. I can only advise them. I was only the lawyer.
>
> "What could I do with them?
>
> "What could I do? I didn't run this company."
>
> (Tr. 7/29/75 - Afternoon Session, p. 28, l. 4)

In the same vein, on the subject of whether he told the defendant, Chester Carity, to discontinue a certain sales technique, Mr. Friend testified:

> "I told Chester Carity definitely. I didn't lecture to Chester Carity. He is the boss. I work for him.

> "I advised Chester Carity. He was the founder of the company. I couldn't dare go into his office and lecture to Chester. I couldn't do it.
>
> "I advised him."
> (Tr. 7/29/75 - Afternoon Session, p. 58, l. 11)

d. Mr. Friend will seek to take credit for all beneficial changes in the Company's practices. Indeed, his testimony before the Grand Jury tended to create the impression that he was the only one concerned with eliminating sharp practices. At one point he testified:

> "If anything got cleaned up, I did it."
> (Tr. 7/29/75 - Afternoon Session, p. 34, l. 11)

On another occasion he testified somewhat more colorfully:

> "I worked my rear end off trying to get this company to do something right."
> (Tr. 7/31/75 - Morning Session, p. 97, l. 14)

10. The testimony quoted above demonstrates that Mr. Friend's defense and that of Amrep will be conflicting and irreconcilable, a circumstance made all the more prejudicial by the fact that the conflict will be between an attorney and his client. However, not merely the substance of the testimony but the fact that it was given at all would be a source of severe prejudice at a joint trial. Mr. Friend's counsel would be duty-bound to comment on his client's cooperation with the Grand Jury, while leaving it to the trial jury to draw an inference of guilt from the silence of the other defendants. Thus, Mr. Friend's right to a vigorous defense will conflict irreconcilably with the constitutional rights of his co-defendants under the Fifth Amendment. This conflict can be resolved only by the severance sought here.

Mr. Friend Will Seek To Offer Evidence That Is Privileged

11. Mr. Friend's testimony before the Grand Jury demonstrates that at a joint trial there will be yet another irreconcilable conflict, one arising out of his attempt to exculpate himself by offering evidence falling within the attorney-client privilege, the "work product" privilege or both.

12. In his Grand Jury testimony, Mr. Friend expressed his dilemma in the following terms:

> "That is the problem I have, Ms. Hynes, I can't tell you everything as much as I want to because the company has not waived my attorney-client privilege, and I cannot therefore tell you the things that I did that I know were done honestly."
> (Tr. 7/29/75 - Morning Session, p. 6, l. 22)

13. In the Grand Jury room, Mr. Friend solved his dilemma by using a procedure under which he disclosed the substance of confidential memoranda under the guise of refreshing his recollection from those same memoranda.* For example, when questioned concerning a promotional film he had reviewed, Mr. Friend testified:

> "While I am not at liberty to reveal this memorandum because counsel has not received a waiver of the privilege, the attorney-client privilege, it does refresh my recollection that I told the head of the advertising department, the attorney in the legal department, and the head of the film department, in effect that I wanted not only the film changed, but I wanted the advertising changed, and I wanted it done quickly."
> (Tr. 7/29/75 - Morning Session, p. 6, l. 7)

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* Later, in his effort "to establish that he [had] acted in a good faith effort to insure Amrep's compliance with the law and that consequently he should not be indicted", Mr. Friend obtained from Judge Duffy an order entitling him "to turn over documents to the Grand Jury." Judge Duffy noted, "however, the continuing assertion by the corporation of its attorney-client privilege with respect to these documents" (Memorandum and Order dated October 15, 1975, pp. 2-3). The turnover of the documents was soon followed by the indictment.

14. On another occasion, after testifying as to the substance of a memorandum in his possession, the following colloquy occurred:

> "Q Are you reading from a memo?
>
> A I am using a privileged memo which
> I wrote to refresh my recollection.
>
> I would love for you to have it, but
> it has been held privileged by the
> Court...."
> (Tr. 7/31/75 - Afternoon Session, p. 33,
> 1. 3)

15. Indeed, with respect to one memorandum, Mr. Friend did not even bother to use the device of "refreshing his recollection." He stated:

> "Let me read it to you. I don't want
> any misunderstanding.
>
> I don't care if it is privileged or
> not privileged. I want you to know
> what I did."
> (Tr. 7/29/75 - Afternoon Session, p. 21, 1. 8)

16. The "work product" privilege was likewise breached. Time and again, Mr. Friend testified concerning information learned by him for the first time during the course of his activities on behalf of Amrep after the Grand Jury investigation began. For example, on the subject of when he first learned that written scripts were used by speakers who made presentations at sales dinners, Mr. Friend testified:

> "I was not aware of the fact that there
> was a speaker who used a script until --
> after -- a printed script, until after
> your investigation started."
> (Tr. 7/24/75 - Afternoon Session, p. 45, 1. 2)

I am advised that such scripts were subpoenaed by the Government and that Mr. Friend was involved in producing them for the Grand Jury.

17. Nor did discussions with co-counsel receive

any more sanctity in the Grand Jury room. Thus, when questioned about a report dealing with the depth of water at Rio Rancho Estates, Mr. Friend testified as to his "understanding" based upon "various debriefings". He added:

> "But I can tell you that my recollection, while I was functioning actively as the attorney for the company in this case with Stan Arkin and with Irving Parker and Ed Winslow and Joan and all of the other lawyers that have been involved in this case, that there is some question concerning the accurancy of the depth of that water."
> (Tr. 9/4/75 - Morning Session, p. 24, l. 14)

As appears from the affidavit of Edward B. Winslow, he and Irving Parker are members of, and Joan Dacey is an associate with, the firm of Jacobs Persinger & Parker, which represented Amrep with respect to the Grand Jury investigation. Stanley Arkin represented certain of the individual defendants.

18. On the subject of customer complaints, Mr. Friend testified concerning a survey he caused to be prepared:

> "It was prepared by Bob Brown [a paralegal assistant on Amrep's staff] from the files that were given to you in connection with my work as one of the defense lawyers.
>
> "I said, 'Bob,' and said to Joan Dacey, 'I want you to prepare for me, add them all up, whatever you gave Miss Hynes . . . .'"
> (Tr. 7/29/75 - Afternoon Session, p. 11, l. 9)

Though Mr. Friend declined to produce the survey at that time, he nevertheless proceeded to state the number of complaints included and their ultimate disposition.

19. Perhaps the most troubling aspect of Mr. Friend's testimony at a joint trial would be the fact

that with respect to many matters, he no longer recalls when and in what capacity he learned certain information. As he conceded at one point in his testimony before the Grand Jury:

> ". . . since you started this investigation
> in March of 1974 I've lost track of when I
> learned certain things."
> (Tr. 9/9/75 - Morning Session, p. 60, l. 19)

20. These excerpts from Mr. Friend's Grand Jury testimony provide a preview of what can be anticipated at the trial. In offering such testimony, Mr. Friend's counsel will no doubt argue that the canons of ethics expressly afford an attorney the right to exculpate himself even if this results in breaching the attorney-client privilege. But here, attorney and client are facing a joint trial and the testimony the attorney will seek to introduce transcends the attorney-client privilege. The corporate defendants will be confronted with the choice of acquiescing in the breach of the privileges or arguing in court that the evidence should be kept from the jury. The dilemma thus presented goes to the very heart of the constitutional right to the sanctity of the councils of the defense.

21. Furthermore, not merely Mr. Friend's testimony is at issue. As appears from the affidavit of his attorney, other lawyers on Amrep's staff will be asked to testify in Mr. Friend's defense. They too are bound by the attorney-client and "work product" privileges. Their breach of these privileges at a joint trial would be highly prejudicial to Amrep. Their silence would be prejudicial to Mr. Friend.

Severance Is Essential To A Fair Trial

22. For the reasons discussed in this affidavit and others mentioned in Mr. Friend's moving papers, an order directing that Mr. Friend be tried separately is the only means of affording the various defendants a fair trial. A joint trial must inevitably result in severe prejudice to some or all of them.

23. If the government argues that the expense to the public of two separate trials warrants denial of this motion, the answer is that Mr. Friend's association with Amrep is sufficiently recent so that his trial would take a small fraction of the time it will take to try the other defendants, perhaps as little as two weeks. But even if this were not so, the motion should be granted. The spectacle of an attorney pitted against his client under the circumstances of this case is an injustice no public interest can vindicate. On the contrary, the public interest requires a severance here so that all of the defendants can fully and fairly present their defense.

George G. Gallantz
GEORGE G. GALLANTZ

Sworn to before me this
23rd day of January, 1976

Philip Castellano Jr.
Notary Public

PHILIP CASTELLANO JR.
NOTARY PUBLIC, State of New York
No. 30-[illegible]
Qualified in Nassau County
Certified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	Index No. 75 Cr. 1023
-against-	:	
AMREP CORPORATION, et al.,	:	AFFIDAVIT
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWARD B. WINSLOW, being duly sworn, deposes and says:

1. I am a member of the firm of Jacobs Persinger & Parker which has served as outside legal counsel to AMREP Corporation ("AMREP") since February 1968. From 1962 until February 1968 I was a member of the firm of Royall, Koegel & Rogers which served as AMREP's outside legal counsel during that period, and while a member of both firms I have been in charge of the AMREP account. I am fully familiar with the facts stated herein and submit this affidavit in support of AMREP's motion for an order pursuant to Rule 14 Federal Rules of Criminal Procedure directing that the defendant, Solomon H. Friend, AMREP's General Counsel, be tried separately from the other defendants.

2. By 1968 the volume of AMREP's legal work had reached such a high level that I recommended to the client that it consider organizing an in-house legal department, and it hired its first attorney that year. In 1969 management of AMREP made the determination that AMREP should have a legal department with the competence of handling substantially all of its routine legal matters, and decided to

retain Mr. Friend, having first consulted with me. Mr. Friend became Vice President and General Counsel of AMREP in 1970 and in time AMREP's legal department grew to include five additional lawyers.

3. At the time Mr. Friend assumed his new responsibilities and thereafter he consulted with me concerning AMREP's legal problems, and we worked closely together to effect an orderly transition of legal duties and responsibilities to him and his staff. The transfer of responsibilities from my firm to the AMREP in-house legal department took place gradually over a period of time, and until late 1971 my firm still retained responsibility for compliance with the Federal Interstate Land Sales Full Disclosure Act and the New York laws regulating the sale of subdivided lots. However, by the end of 1971, the AMREP legal department had assumed responsibility for compliance with all State and Federal laws regulating the sale of subdivided land. My firm continued to retain responsibility for S.E.C. registration and compliance matters, corporate financings, pension plans and such other matters as were specifically referred to us.

4. In the course of his work for AMREP Mr. Friend developed an expertise in land sales regulation. I am informed that during the past several years he lectured on government regulation of land sales at Practicing Law Institute seminars on land acquisition and development, wrote a chapter for the accompanying course texts, and also lectured several times at two major universities.

5. AMREP first learned of the Grand Jury investigation on March 29, 1974 when two identical subpoenas *duces*

tecum were served upon AMREP and Rio Rancho Estates, Inc. addressed to the "Custodian of Records" of each corporation. In early April, 1974, Jacobs Persinger & Parker was retained by AMREP as counsel with respect to the investigation. Irving Parker and I were the partners and Joan Dacey was the senior associate working on the matter. From the outset, our principal contact at AMREP and the individual with whom we worked and consulted was Mr. Friend.

6. During the period March, 1974 to the end of January, 1975 when we first learned that Mr. Friend was a target of the Grand Jury investigation, he was intimately involved in the day-to-day strategy deliberations and decisions concerning AMREP's defense to the investigation. He was both an indispensable source of information about AMREP and its activities and a valued consultant whose many years of experience in the law made possible a constructive exchange of ideas in virtually every phase of the defense. He supervised and participated in the gathering of documents responsive to the subpoenas *duces tecum* addressed to AMREP and its subsidiaries; assisted in interviewing corporate employees subpoenaed to testify before the Grand Jury; participated in the preparation of various motions, including motions to quash the subpoenas and applications relating to the attorney-client and "work product" privileges; and contacted various former employees and consultants retained by AMREP or its subsidiaries who were subpoenaed to testify before the Grand Jury in order to have them debriefed following their appearance before that body.

7. More particularly, Mr. Friend's activities during this period included the following:

(a) He was responsible for overseeing the gathering of documents responsive to various subpoenas duces tecum addressed to AMREP and its subsidiaries. Documents were reviewed first by Mr. Friend or an in-house attorney designated by him and thereafter by my firm to determine whether they were called for by the subpoenas and whether any of the documents might fall within the ambit of the attorney-client or "work product" privileges. Those documents which were not privileged were then produced and authenticated before the Grand Jury by the designated Custodian. Documents believed to be privileged were presented at various times to the Court for rulings.

(b) A number of employees of AMREP and its subsidiaries were subpoenaed to appear before the Grand Jury. Generally, the assistant United States attorney in charge of the investigation would inquire of us whether we would accept the subpoenas on behalf of the employee. The inquiry would be passed on to Mr. Friend, who would generally obtain such authority from the individual subpoenaed. On a number of occasions prior to the employee's testifying, he or she would be interviewed by Mr. Parker, frequently in company with Mr. Friend. Miss Ducey had the responsibility of debriefing witnesses and she normally gave Mr. Friend an oral report of the substance of the debriefing. Copies of written debriefing summaries were forwarded to Mr. Friend.

(c) Motions to quash were made against two sweeping subpoenas duces tecum dated August 2, 1974, one addressed to AMREP and the other to Rio Rancho Estates, Inc. and a subpoena duces tecum dated October 3, 1974 addressed to J. K. Lasser & Co., AMREP's auditors. Mr. Friend was consulted in connection with the decision to make these motions. We drafted the papers which were then reviewed by Mr. Friend and revised in accordance with his comments. In September, 1974, when the Government made a motion to have AMREP held in civil contempt, Mr. Friend took part in the preparation of the affidavit in opposition to the Government's motion. Applications to Judge Pierce and Judge Weinfeld in 1974 and Judge Bonsal in January, 1975 were made concerning documents AMREP believed to be privileged. Mr. Friend was consulted with respect to each of these applications.

(d) During this period, Mr. Friend was in contact with various former employees and consultants retained by AMREP or its subsidiaries who were subpoenaed to testify before the Grand Jury. Mr. Friend and Mr. Arkin met with certain of these individuals before they testified. In addition, Mr. Friend arranged to have certain former employees and consultants who testified before the Grand Jury debriefed either by Miss Dacey, or one of his in-house attorneys, or, on at least one occasion, by Mr. Friend himself.

(e) During this entire period, in addition to innumerable conferences, Mr. Friend was in telephone communication with us at length on a virtually daily basis concerning defense strategy and the latest developments in the investigation. He met repeatedly with Mr. Parker, Mr. Arkin and me. He had his legal staff research certain matters and suggested certain matters for research by my firm or Mr. Arkin. He was the conduit between AMREP and outside counsel. Anything concerning the investigation that came to the attention of AMREP employees in New York or in New Mexico was funneled to Mr. Friend and conveyed by him to us and Mr. Arkin.

8. In late January, 1975, when it was learned for the first time that he was a target of the Grand Jury investigation, his involvement in the defense changed somewhat. On advice of his own defense counsel, he relinquished responsibility for complying with subpoenas duces tecum although, based upon conversations with him, I know that Mr. Friend saw copies of certain of the subpoenas and certain documents produced pursuant to them. Mr. Friend substantially ceased to meet with witnesses before they testified. However, as AMREP's General Counsel and because his knowledge and expertise made his participation essential to AMREP's defense, Mr. Friend continued to be in virtually

daily contact with Mr. Parker, Mr. Arkin or me concerning strategy and developments in the investigation.

Edward B. Winslow
Edward B. Winslow

Sworn to before me this
[illegible] day of January, 1976.

Notary Public

STEVEN A. SANDERS
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible], 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

v. : 75 Cr. 1023 (CMM)

AMREP CORPORATION, et al., :

Defendants. :

MEMORANDUM IN SUPPORT OF MOTION BY DEFENDANT AMREP CORPORATION TO SEVER DEFENDANT SOLOMON H. FRIEND PURSUANT TO RULE 14, FEDERAL RULES OF CRIMINAL PROCEDURE

Preliminary Statement

This memorandum is submitted in support of the motion by defendant Amrep Corporation ("Amrep" or the "Company") for an order, pursuant to Rule 14, Federal Rules of Criminal Procedure, directing that defendant, Solomon H. Friend, Amrep's General Counsel, be tried separately from the other defendants named in the indictment.

The moving affidavits demonstrate that a severance is essential to a fair trial in the present case because a joint trial would deprive Amrep of the legal assistance, knowledge and expertise of its General Counsel, and because Mr. Friend's Grand Jury testimony shows that, in an effort to exonerate himself, he will pursue a defense antagonistic to that of his client and will seek to offer evidence in violation of the attorney-client and work product privileges.

By reason of his background before joining Amrep, his knowledge of the Company and its activities and his status as head of Amrep's legal staff, Mr. Friend occupied a unique position in the councils of the defense during the Grand Jury investigation. Indeed, for the nine months before he learned that he was a target, he functioned as the nerve center of the defense team, being intimately involved in virtually every phase of its activities.

Amrep's need for the advice and assistance of its General Counsel is even more vital in the pre-trial and trial stages of the proceeding than it was during the Grand Jury investigation. Yet, without a severance, such assistance will not be available. At a joint trial, Mr. Friend's role will be that of an accused rather than an attorney. He will be forced to pursue a defense antagonistic to Amrep, seeking to exculpate himself by divulging privileged information acquired in the service of his client.

The very real prejudice threatened here arises not merely from the breach of evidentiary privileges or the clash of antagonistic defenses, though these provide a basis for severance under the decisions. The issues presented are of constitutional dimension. They relate to the Sixth Amendment and the fundamental principle of the sanctity of the councils of the defense. Their resolution requires the severance sought since only in this way can client and attorney be afforded fair trials.

Statement of Facts

The indictment charges in essence that commencing on or about January 1, 1961 the defendants "willfully and knowingly did devise and intend to devise a scheme and artifice to defraud and for obtaining money in excess of $200,000,000 . . ." by purchasing "the land comprising Rio Rancho Estates" for "approximately $17,850,000", subdividing it and selling lots "by means of high pressure sales techniques which involved a variety of false and fraudulent pretenses, representations, promises and means. . . ." (¶¶ 13, 15, 18(f)) Among those indicted were Amrep's General Counsel, Mr. Friend, who did not become associated with the Company until almost a decade after the "scheme" charged in the indictment had allegedly originated, and whose services on its behalf were almost entirely of a legal nature.

As appears from the moving affidavits, Mr. Friend, an attorney with some twenty-seven years' experience, specializing in administrative law and trade regulation, was retained by Amrep to develop an in-house legal department. He became Amrep's Vice President and General Counsel in 1970. Among other things, the legal staff he organized assumed responsibility for compliance by Amrep with various federal and state regulations relating to the sale of subdivided land. In the course of his work for Amrep, Mr. Friend developed an expertise in land sales regulation and both lectured and wrote on the subject of land acquisition and development.

Following the commencement of the Grand Jury investigation in March, 1974 and for approximately nine months thereafter, Mr. Friend was intimately involved in virtually every phase of Amrep's defense including document production, strategy deliberations with co-counsel, briefing and debriefing of witnesses, motion practice and the like. It was not until late January, 1975 that Mr. Friend learned for the first time that he was a target of the investigation (see Gallantz aff. ¶8). On advice of his own counsel, he then relinquished certain responsibilities in connection with Amrep's defense. However, as Amrep's General Counsel and because he was an indispensable source of information about the Company and its activities, he continued to participate in the councils of the defense.

Mr. Friend is the only officer of Amrep who waived his Fifth Amendment rights before the Grand Jury. He testified before it on eleven separate occasions and his all-consuming effort to exonerate himself, without regard to whether his exoneration will incriminate his client, included a motion for an order permitting him to turn over privileged documents to the Grand Jury. Judge Duffy granted such an order expressly noting "the continuing assertion by the corporation of its attorney-client privilege with respect to these documents" (Memorandum and Order dated October 15, 1975).

In its defense of the action, Amrep may wish to establish that many of the claims of the indictment deal with little more than "seller's puff"; that its sales materials were regulated by federal and state agencies and that it relied in good faith on its in-house legal staff and its outside counsel to see to it that all authorized sales techniques were lawful.

On the other hand, it is evident from Mr. Friend's testimony before the Grand Jury, that his defense will be irreconcilably antagonistic to that of Amrep. He will seek:

(1) to disassociate himself from Amrep's practices, particularly those instituted before he joined the Company (Gallantz aff., ¶9a);

(2) to disclaim knowledge of various matters claimed by the government to be a part of the alleged "scheme" (Gallantz aff., ¶9b);

(3) to emphasize that he did not make or control Amrep's business decisions and that he could only passively "advise" those who controlled corporate conduct (Gallantz aff., ¶9c);

(4) to take credit personally for all beneficial changes in the Company's practices. Indeed, his testimony before the Grand Jury, taken alone, leaves the impression that he was the only one concerned with eliminating sharp practices (Gallantz aff., ¶9d).

Furthermore, in his attempt to exculpate himself before the Grand Jury, Mr. Friend disclosed evidence falling within the protection of the attorney-client and work product privileges. Thus, Mr. Friend employed a procedure under which he disclosed the substance of confidential memoranda under the guise of refreshing his recollection from those same memoranda. (Gallantz aff., ¶¶ 13 and 14). Indeed, at one point in his testimony he blatantly announced his intention to breach the privilege, stating, with regard to a memorandum:

> "Let me read it to you. I don't want any misunderstanding.
>
> "I don't care if it is privileged or not privileged. I want you to know what I did."
> (Tr. 7/29/75 - Afternoon Session, p. 21, l. 8)

Judge Duffy's order (supra, p. 5) permitting Mr. Friend to turn documents over to the Grand Jury notwithstanding Amrep's "continuing assertion of its attorney-client privilege" came later and was shortly followed by the issuance of the indictment.

The work product privilege was likewise breached. Repeatedly, Mr. Friend testified to information first learned during the course of his defense activities on behalf of Amrep after the Grand Jury investigation had begun (Gallantz aff., ¶¶ 16-18). He also testified to the contents of discussions had with co-counsel in that defense effort (Gallantz aff., ¶17).

One of the most troubling aspects of Mr. Friend's testimony at a joint trial would be his inability to recall when and in what capacity he learned certain information. As he conceded in his testimony before the Grand Jury:

> ". . . since you started this investigation in March of 1974 I've lost track of when I learned certain things."
> (Tr. 9/9/75 - Morning Session, p. 60, l. 19)

This admitted uncertainty increases the risk that, in his attempt to exculpate himself, Mr. Friend at a joint trial, will reveal privileged matter in violation of the Fifth Amendment rights of other officers or former officers of Amrep as well as Sixth Amendment rights of Amrep itself.

SEVERANCE IS REQUIRED BECAUSE OF MR. FRIEND'S UNIQUE POSITION IN THE COUNCILS OF THE DEFENSE

Of all the protections guaranteed to a defendant in a criminal proceeding under the United States Constitution, few rights, if any, are more fundamental or vital to a fair trial than the right to "Assistance of Counsel." The Sixth Amendment expressly provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." Gideon v. Wainwright, 372 U.S. 335 (1963), held that this right was fundamental and essential to a fair trial.

A corollary principle recently recognized and discussed by the United States Supreme Court in United States v. Nobles, 422 U.S. 225 (1975), is the vital role of the work product doctrine in safeguarding the preparation and presentation of the defense in a criminal proceeding:

> "Although the work product doctrine most frequently is asserted as a bar to discovery in civil litigation, its role in assuring the proper functioning of the criminal justice system is even more vital. The interests of society and the accused in obtaining a fair and accurate resolution of the question of guilt or innocence demand that adequate safeguards assure the thorough preparation and presentation of each side of the case." (at 238)

A severance is essential to a fair trial in the present case because a joint trial would deprive Amrep of the legal assistance, knowledge and expertise of its General Counsel and will expose it to disclosure of privileged material as Mr. Friend strives to exculpate himself. Further, the atmosphere of desperate competition to "save one's skin" demonstrated so palpably by Mr. Friend's Grand Jury testimony would, in a joint trial, subvert the basic policies served by the Sixth Amendment and the work product doctrine.

That vital interests under the Fifth and Sixth Amendments, as well as the work product doctrine, were at stake under circumstances similar to the present case was recognized in In re Terkeltoub,* 256 F.Supp. 683 (S.D.N.Y. 1966) (Frankel, J.). Terkeltoub, a lawyer, was called before the Grand Jury then investigating an allegation that he and his client, one Fiorillo, had obstructed justice by attempting to suborn perjury of a witness at Fiorillo's pending criminal trial. The government applied to compel Terkeltoub to give Grand Jury testimony, and Terkeltoub refused on the ground that his testimony would violate his client's Fifth and Sixth Amendment rights to due process and the effective assistance of counsel.

Initially, the court noted that Terkeltoub did not base his refusal to answer upon the traditional attorney-client privilege, but rather upon grounds which raised the broader issues of the work product privilege and Fifth and Sixth Amendment rights. (Id. at 684)

The court observed that while "the Government comes here with the laudable purpose of guarding against suspected attacks on the integrity of the judicial process itself. . . .":

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* Cited with approval in United States v. Nobles, supra, at 238 n.12.

> "On the other hand, the disclosures now demanded touch a vital center in the administration of criminal justice, the lawyer's work in investigating and preparing the defense of a criminal charge. Appraising these interests in the circumstances now presented, the court concludes that the attorney was not only entitled, but probably required, to withhold answers to the grand jury's questions.
>
> (Id.) (emphasis added)

The court continued:

> "In explaining this conclusion, it bears emphasis that while the witness before us is a lawyer, the crucial interests at stake belong to the whole community. As a seasoned trial lawyer and Justice said, 'it too often is overlooked that the lawyer and the law office are indispensable parts of our administration of justice. * * * The welfare and tone of the legal profession is therefore of prime consequence to society, which would feel the consequences' of a practice impairing the lawyer's effective representation of his client. Hickman v. Taylor, supra, 329 U.S. at 514-515, 67 S.Ct. at 395 (Jackson, J., concurring).
>
> * * *
>
> "And so we start here with a demand that is troublesome on its face -- a demand that a lawyer be forced to testify about his work in supposed defense of a client. Our problem is not solved, but it is affected, by a recognition that this sort of procedure must have at least a slightly chilling impact upon counsel for defendants in criminal cases. Again, this has nothing to do with whether lawyers for their own sakes should be treated

> better or worse than other people. It has to do with how the public may fare depending on the course followed with applications like the one before us.
>
> (*Id.* at 684-85) (emphasis added)

Most significant to the instant proceeding is the court's holding that a defendant has a right to prepare his defense in secret, free from governmental interference, and that governmental intrusion upon his secrecy violates the Fifth and Sixth Amendments:

> "Because privacy is so vital to these preparatory efforts, the prosecution is forbidden to eavesdrop or plant agents to hear the councils of the defense. Coplon v. United States, 89 U.S. App.D.C. 103, 191 F.2d 749 (1951), cert. denied, 342 U.S. 926 72 S.Ct. 363, 96 L.Ed. 690 (1952); United States v. Andreadis, 234 F.Supp. 341, 345 (E.D.N.Y. 1964), collecting cases. It makes no difference whether the conversations unlawfully audited are solely between counsel and client and thus within the traditional, non-constitutional privilege. *The defendant has a right to prepare in secret, seeing and inviting those he deems loyal or those with whom he is willing to risk consultation. The prosecution's secret intrusion offends both the Fifth and Sixth Amendments*. Caldwell v. United States, 92 U.S. App. D.C. 355, 205 F.2d 879 (1953), cert. denied 349 U.S. 930, 76 S. Ct. 773 (1955).
>
> "*Our problem is altogether different, the Government says, because there is no question here of surreptitious invasion,* but only an open demand that defense counsel report what went on. This is a distinction, to be sure, and it obviously

> makes some difference. *It does not make enough difference, however, to extract the testimony the Government demands for the grand jury.*
>
> "The ultimate interest to be protected is the privacy and confidentiality of the lawyer's work in preparing the case. It is the violation of that interest that is held offensive to the Constitution in the cases of eavesdropping and spying. The protection would be a thin illusion if the Government could have for the asking what it has, in rare lapses, sought by less genteel means."
>
> (*Id.* at 685) (emphasis added)

Here, as in *Terkeltoub*, disclosure of communications betwee client and attorney and the material generated in the preparation of the defense of the Grand Jury proceeding would interfere with vital constitutional rights of Amrep and its officers and former officers.

It bears emphasis that the *Terkeltoub* opinion upholds the privacy of the defense preparation in spite of the fact that the attorney and client were thought to have jointly committed a crime. The opinion also affirms that the work product and associated privileges are available at the grand jury stage of proceedings.*

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* *In re Grand Jury Proceedings*, 473 F.2d 840, 842, 847 (8th Cir. 1973), applying *Terkeltoub*, also established (1) that the "work product" privilege exists even if the client is a corporation and (2) that the test of whether the work product doctrine applies is not whether litigation has begun, but whether documents were prepared or obtained in anticipation of litigation.

In United States v. Mitchell, 372 F.Supp. 1239 (S.D.N.Y. 1973) (Gagliardi, J.) defendant Stans moved to dismiss the indictment on the grounds that his Fifth and Sixth Amendment rights were violated by the questioning of his former lawyer, one Parkinson, before a grand jury other than the one which indicted Stans. The court denied the motion, but the motion for alternative relief suppressing certain documents and Parkinson's testimony before the grand jury was granted.

Parkinson had acted as Stans' counsel in various civil actions in the Watergate affair and until the latter part of April 1973, had represented Stans in connection with the grand jury investigation.

In May of 1973, after the termination of Parkinson's representation of Stans in the grand jury proceeding, Parkinson met with prosecuting attorneys who questioned him with regard to meetings during the summer and fall of 1972 concerning the Vesco contribution. Parkinson answered several questions by referring to a file of handwritten and typed notes that he had brought with him. At the close of the interview, Parkinson removed from the file those papers he considered to be privileged, but permitted the prosecutors to copy the remaining documents.

The court held that the Government's intrusion into "matters protected by the work product rule" violated the Fifth and Sixth Amendments, regardless of the voluntary cooperation of the attorney:

> "Without detailing the content of the documents in question, we can describe them as falling into two categories: first, statements prepared by Stans for use by Parkinson in connection with pending civil litigation; second, notes made by Parkinson following interviews with various third parties. Beyond question, these documents are the result of the attorney's investigation and preparation of his client's case. The fact that they are not within the technical scope of the attorney-client privilege does not render them amenable to examination and use by the prosecutor. In re Terkeltoub, 256 F.Supp. 683 (S.D.N.Y. 1966). In *Terkeltoub*, the Government sought to compel an attorney to testify before the Grand Jury concerning a meeting among the attorney, his client and a third party. The meeting was held in preparation of the client's case for trial. In deciding that the attorney's testimony could not be compelled, Judge Frankel stated, '[t]he ultimate interest to be protected is the privacy and confidentiality of the lawyer's work in preparing the case' and concluded that, '[t]he prosecution's secret intrusion [into this area] offends both the Fifth and Sixth Amendments.' *Id.* at 685. *We find the Government's efforts to distinguish* Terkeltoub *on the basis of compelled versus voluntary testimony unpersuasive. It is clear that an attorney is 'not only entitled, but probably required, to withhold' such testimony.* Id. *at 684. The decision to 'volunteer' information of this nature rests with the client.* Parkinson's erroneous conclusion that the information could not be

> withheld can in no way be imputed to Mr. Stans nor can the 'fruits' of that conclusion be used to the detriment of the defendant."
>
> (Id. at 1245-1246) (emphasis added) (footnotes omitted)

The court concluded that:

> ". . . the Government's conduct in relation to Parkinson constituted a violation of the defendant's Fifth and Sixth Amendment rights . . . ."
>
> (Id.)

A fortiori, here, Mr. Friend's testimony before the indicting Grand Jury constituted a violation of Amrep's constitutional rights, but suppression of this testimony would not end the matter. The instinct for self-preservation that caused Amrep's General Counsel to act as he did before the grand jury must intensify at a joint trial. The problem is compounded by the fact that he can no longer recall when and the circumstances under which he learned much of the information he will seek to disclose. However diligently the Court regulates the trial, the inevitable struggle between attorney and client under these circumstances must severely prejudice the defense of one or the other, or both.

The federal courts have recognized that under certain circumstances, a joint trial of defendants may result in an intolerable conflict between the need of one defendant to produce exculpatory evidence as to himself and an important right or privilege of other defendants to exclude such evidence. For example, the necessity for a severance has been recognized when a joint trial threatened to disrupt the marital relationship or lead to violations of the marital privilege. *See* *United States v. Fields*, 458 F.2d 1194 (3d Cir. 1972), *cert. denied*, 412 U.S. 927 (1973); *United States v. Thoresen*, 281 F.Supp. 598 (N.D. Calif. 1967).*

In *United States v. Thoresen*, *supra*, a husband and wife were indicted for violation of federal firearm control laws. Evidence taken in pretrial motions made it apparent that the husband and wife would pursue antagonistic defenses, disputing as to which of them was responsible for the possession and shipment of the various firearms. The wife moved for a separate trial, contending that the marital privilege -- which would allow her to prevent her spouse from testifying against her -- could not be effectively exercised in a joint trial. The court agreed and ordered a severance.

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* Another example of intolerable conflict between co-defendants recognized by the courts as justifying severance was the problem posed in *De Luna v. United States*, 308 F.2d 140 (5th Cir. 1962) discussed at pages 24-25, *infra*.

After observing that at a joint trial, each defendant would be in a position of defending himself or herself "at the expense of the other" and that interference with the marital privilege appeared "probable" the court stated:

> "In the context of this case a separate trial of the spouses is essential, not only to protect the evidentiary rules available to the spouses, but to permit them to exercise their respective rights to testify with at least the minimum hazard of the testimonial privilege being asserted."
>
> (*Id.* at 601)

Rejecting a "wait and see" approach and mindful of the immediate need of the parties for a severance in order properly to prepare their defenses, the court observed:

> ". . . the evidence already presented at the pretrial motions suggests the defenses are likely to be conflicting, and the Court's present view of the case is that their interests are conflicting. In such a posture it is timely to grant the motion to sever prior to trial, and thereby avoid the trial difficulties and prejudices which these conflicts might engender. Furthermore, the wait and see alternative offers little consolation to a party while he is attempting to prepare his defense."
>
> (*Id.* at 602)

In *United States v. Fields*, *supra*, the Third Circuit Court held a denial of severance to be error, albeit harmless on the facts of that case, where a joint trial conflicted with the marital privilege. In *Fields*, the defendant Davis contended that, as against him, the trial court had erred in denying him a severance while permitting his co-defendant Fields to call Davis' wife as a witness on matters relevant to charges against both defendants. Judge Hastie agreed, observing:

> ". . . the spouse who is a defendant may fear that his defense will be prejudiced, even unintentionally, by some testimony of his spouse *or by the very fact that she testifies for a co-defendant and not for him.* In this situation, the proper procedure is to grant a severance and then permit the witness to testify for the defendant who is not his or her spouse. Therefore, the court's refusal to grant Davis a severance when Fields called Mrs. Davis as his witness was error."
>
> (458 F.2d at 1199) (emphasis added)

In *Fields* the court recognized that a defendant may be prejudiced "by the very fact that [his wife] testifies for a co-defendant and not for him." *Id.* The prejudice to Amrep would be far greater if, at a joint trial, its General Counsel with whom it had an intimate, confidential relationship, were permitted to testify in a manner damaging to its defense, using privileged information to do so.

The prejudice to Amrep will be all the greater because Mr. Friend will seek to reveal not merely material falling within the attorney-client privilege but also work product developed during the course of his activities as a defense attorney in this proceeding. While the former, like the marital privilege, is evidentiary in nature, the latter bears directly upon the sanctity of the councils of the defense.[*]

In sum, there are at stake here two fundamental interests guaranteed by the Sixth Amendment: the sanctity of the councils of the defense and the right to the effective assistance of the counsel. Properly to prepare its defense, Amrep must be able to draw upon the knowledge, expertise and experience of its General Counsel free from governmental interference. At a joint trial, however, this right would be completely frustrated since Mr. Friend would himself be an accused and his primary concern must be his own defense even at the expense of disclosing his client's confidences. Only a severance can restore Mr. Friend's role as a unique and indispensable member of the councils of the defense.[**]

---

[*] Judge Duffy's order of October 15, 1975 expressly left open "the continuing assertion by the corporation of its attorney-client privilege with respect to these documents." Judge Duffy's approval of Mr. Friend's use of privileged documents in his own defense emphasizes the necessity for separate trials.

[**] Severances have been granted to enable a defendant to present the exculpatory testimony of a co-defendant where the latter is unwilling to relinquish his right to remain silent at a joint trial. *See* *United States v. Echeles*, 352 F.2d 892 (7th Cir. 1965); *United States v. Gleason*, 259 F.Supp. 282 (S.D.N.Y. 1966) (Frankel, J.). If severance is appropriate to make a witness available, how much more appropriate must it be to make available to Amrep the assistance of its General Counsel.

SEVERANCE IS REQUIRED BECAUSE MR. FRIEND WILL ASSERT AN ANTAGONISTIC DEFENSE AT A JOINT TRIAL, TO AMREP'S SEVERE PREJUDICE

The threat of a joint trial under the circumstances of this case confronts Amrep with a cruel irony. Absent a severance, Mr. Friend, who has served as its General Counsel for almost six years, who functioned as the nerve center of the defense team during much of the Grand Jury investigation and whose advice and assistance is even more vital now, will have been transformed into Amrep's most dangerous adversary.

Instead of having Mr. Friend at its counsel table, Amrep would face the prospect of defending against the charges both of the Government and of its own General Counsel who would be seeking to exculpate himself.

Although the other officers of Amrep exercised their Fifth Amendment right to silence before the Grand Jury, Mr. Friend chose to waive that right. The testimony he gave on eleven separate occasions must be regarded as a blueprint of the testimony he will give at the trial. Mr. Friend will seek to take credit for all that is right about the Company and to shift to his co-defendants the blame for whatever the Government asserts is wrong, an approach made all the more prejudicial by this attorney's disclosures, like those before the Grand Jury, of privileged material to his client's detriment.

The necessity of a severance to avert severe prejudice resulting from antagonistic defenses at a joint trial is discussed in the study by the American Bar Association Project on Minimum Standards for Criminal Justice, Joinder and Severance 41 (1967):

> ". . . it has long been the view that defendants joined for trial should be granted a severance whenever their defenses are antagonistic to each other. Annot., 70 A.L.R. 1171, 1184-85 (1931). What is to be avoided is the kind of trial fitting this description by one appellate court of the proceedings below: 'The trial was in many respects more of a contest between the defendants than between the people and the defendants. It produced a spectacle where the people frequently stood by and witnessed a combat in which the defendants attempted to destroy each other.' People v. Braune, 363 Ill. 551, 557, 2 N.E.2d 839, 842 (1936)."

In United States v. Valdés, 262 F.Supp. 474 (D. Puerto Rico, 1967), Valdés moved for a trial separate from that of his co-defendant Vega. Vega's attorney also moved for severance and plainly represented to the court that Vega's main defense at trial would be to testify against and to incriminate Valdés.

The court held:

> "Under these circumstances, it would appear that to have these defendants tried jointly would be highly prejudicial to one of them, Luis Valdés, since the defense proposed by the other defendant is precisely to lay the blame on him.
>
> * * *
>
> "As counsel for defendant Luis Valdés pointedly remarks, Valdés, if compelled to go to trial together with defendant Vega, would have to prepare his defense against two adversaries, the United States and co-defendant Vega. They would be united in their effort to convict Valdés. We must agree that under these conditions, a joint trial would be the equivalent of a denial of a fair and impartial trial. Hence, separate trials must be provided for these two defendants." (at 476)

Here, as in Valdés, Mr. Friend and his co-defendants will engage in an elaborate contest, marshalling evidence each in favor of his or its own defense, which at the same time will have the tendency of shifting blame to the other. In effect, a trial within a trial would develop between Mr. Friend and his co-defendants. The defendants would have two opponents -- the federal prosecutor, and each other. This trial within a trial would be confusing and time-consuming, defeating the prime purpose for a joint trial, namely, efficiency and economy. Furthermore, the spectacle of conflicting testimony tending to shift blame between defendants would have a highly prejudicial and inflammatory effect on the jury, particularly since the struggle would be between attorney and client and the witnesses would include other lawyers on Amrep's staff testifying in favor of one or the other of the combatants.

Inextricably linked to the prejudice inflicted by antagonistic defenses is the further prejudice produced by the likelihood of comment by Mr. Friend's counsel on his client's cooperation with the Grand Jury, leaving it to the trial jury to draw an inference of guilt from the silence of the other defendants. Federal courts have recognized that severance is required if (1) the defendants will present conflicting defenses and (2) the trial judge may forbid counsel to comment on a co-defendant's failure to testify. See De Luna v. United States, 308 F.2d 140 (5th Cir. 1962); United States v. Smith, 65 F.R.D. 464, 472 (N.D. Ga. 1974).

In De Luna, supra, the court in granting a severance stated:

> "In a criminal trial in a federal court an accused has a constitutionally guaranteed right of silence free from prejudicial comments, even when they come only from a co-defendant's attorney. If an attorney's duty to his client should require him to draw the jury's attention

> to the possible inference of guilt from a co-defendant's silence, the trial judge's duty is to order that the defendants be tried separately." (at 141) (emphasis added)

By way of explanation the court added:

> "If comment on an accused's silence is improper for judge and prosecutor, it is because of the effect on the jury, not just because the comment comes from representatives of the State. Indeed, the effect on the jury of comment by a co-defendant's attorney might be more harmful than if it comes from judge or prosecutor. A judge, in keeping with his high degree of responsibility to conduct a fair trial, would be expected to give a balanced, moderate explanation of the inferences to be drawn from silence. Similarly, but to a lesser degree, a prosecutor would be expected to recognize his responsibility for fair comment. But much less restraint can be expected from an attorney to whom no little latitude is allowed when zeal, emotion, eloquence, and the advocate's afflatus take hold of a jury argument.
>
> "Even if it were true that reasonable men cannot avoid drawing 'natural inferences from an accused's silence,' that is quite a different thing from having the silence emphasized by comment. The imputation of guilt from silence, if it does nothing else, may confuse the jury as to the presumption of innocence in favor of the accused." (at 152) (emphasis added) (footnote omitted)

All the factors that prompted the *De Luna* court to grant a severance are present here with the added dimension that the defendant who cooperated with the Grand Ju[illegible]as Amrep's General Counsel who did so at the expense of his client's confidences. Those whose silence Mr. Friend's attorney will be duty bound to exploit were other officers or former officers of the Company. Under these circumstances, an order directing that Mr. Friend be tried separately is the only means of affording the various defendants a fair trial.

THE SEVERE PREJUDICE INFLICTED BY A JOINT TRIAL IS NOT OUTWEIGHED BY ANY COUNTERVAILING PUBLIC INTEREST

Nor does the usual argument about the expense to the public of two separate trials warrant denial of this motion. Separate trials in the present case would not impose an inordinate expense upon the public. Mr. Friend's association with Amrep is sufficiently recent so that his trial would take a small fraction of the time it would take to try the other defendants, perhaps as little as two weeks. Furthermore, the confusion and waste of time engendered as the defendants deal with antagonistic defenses would probably consume any time that would otherwise be saved in trying the defendants jointly.

In United States v. Gambrill, 449 F.2d 1148, 1163 (D.C. Cir. 1971), time consuming difficulties engendered by a demonstrated antagonism between defendants was recognized as a factor justifying a severance:

> ". . . the principal reason for the rule permitting the joinder of offenses is economy of time and efficiency in the judicial process. Relevant to our decision, then, is the consideration that if the demonstrated antagonism continues between these two defendants . . ., it is quite likely to contribute to difficulties at trial and on appeal that would be counter productive to the normal reasons for trying the cases jointly. Once more, this is not a factor which, by itself, would necessarily justify a severance, but it, too, is a factor which, in the present context, supports the conclusion we here reach."
>
> (footnotes omitted)

But even if a joint trial did result in a substantial judicial economy here, that factor would have to be weighed against the severe prejudice inflicted upon the defendants by trying them together. As the Court of Appeals of this Circuit only recently observed in United States v. Finkelstein, ___F.2d___, No. 75-1154, at 851 (2d Cir. December 1, 1975) (Moore, J.):

> ". . . duplication of proof is often inevitable in situations meriting separate trials. The counter-argument of

> judicial economy is, indeed, a serious consideration, but by itself does not foreclose further inquiry."

And as the court observed in United States v. Echeles, 352 F.2d 892, 896-97 (7th Cir. 1965), judicial economy cannot be had at the expense of a defendant's right to a fundamentally fair trial:

> ". . . a single joint trial, however desirable from the point of view of efficient and expeditious criminal adjudication, may not be had at the expense of a defendant's right to a fundamentally fair trial. Barton v. United States, 203 F.2d 894, 898 (5th Cir. 1959); United States v. Kahaner, 203 F.Supp. 78, 80-81 (S.D.N.Y. 1962); Schaffer v. United States, 221 F.2d 17, 19, 54 A.L.R.2d 820 (5th Cir. 1955); United States v. Haupt, supra, 136 F.2d at 671; Hale v. United States, 25 F.2d 430, 438-439 (8th Cir. 1928)."

CONCLUSION

Our system of justice is an adversary one, but never was it contemplated that a client and his attorney should be pitted against one another as adversaries in a criminal proceeding. The prejudicial effect of such a spectacle may, without more, require a severance. Here, however, there is more. Mr. Friend's unique position both as Amrep's General Counsel and an indispensable member of its legal defense team, coupled with his avowed intention of attempting to exculpate himself even at the price of destroying the sanctity of the councils of the defense, raises Fifth and Sixth Amendment issues which can only be resolved by separate trials so that all defendants can fully and fairly present their defenses.

Respectfully submitted,

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Of Counsel:

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Larry M. Lavinsky
Lois D. Thompson

January 23, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

v. : 75. Cr. 1023 (CMM)

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - -x

REPLY MEMORANDUM IN SUPPORT OF MOTION BY DEFENDANT AMREP CORPORATION TO SEVER SOLOMON H. FRIEND

Given the voluminous papers already before the Court, no extended discussion will be attempted here. Rather, this reply will address itself in summary fashion to certain arguments and citations in the Government's 182 page Memorandum, avoiding, insofar as possible, repetition of material in Amrep's main brief.

1

The Government argues, in substance, that the attorney-client privilege will not be a factor at trial because it will make a prima facie showing that "Friend's communications to and from his client, Amrep, were made during and in furtherance of a crime and therefore are not protected by the attorney-client privilege." (p. 98)* The only conduct of Amrep's general counsel specifically referred to in connection with such a "prima facie showing" is "Friend's role" in providing "advice to other co-schemers about how Amrep could comply with the rules of various regulatory bodies . . . " (p. 138). Even if such lawful conduct coupled with evidence of Amrep's "activities" before and after "Friend became involved" were to establish the requisite showing,** not all privileged matter would become available to the prosecution. Rather, the privilege would be lost only as to matters found by the Court to have been in furtherance of the alleged scheme to defraud, *See*, *Pfizer Inc. v. Lord*, 456 F.2d 545, 551 (8th Cir. 1972); *Burlington Industries v.*

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* Unless otherwise specified, page references are to the Government's Memorandum of Law in Opposition to Defendant's Non-Discovery Motions.

** The Government argues further that the Court need not be concerned with whether or not a prima facie showing is made because, failing such a showing, Mr. Friend and other defendants similarly situated "will be out of the case and will not have to present any defense." (p. 123) This argument overlooks the fact that a joint trial until the end of the Government's case would itself work a severe prejudice to Amrep by depriving it of its General Counsel through the critical pre-trial stage and the even more critical phase of the Government's case in chief.

Exxon Corp., 65 F.R.D. 26, 40-41 (D. Md. 1974).*

2

Prejudice to Amrep and the other defendants at a joint trial with Mr. Friend will stem not merely from the likely breach of the attorney-client privilege but, more importantly, from the disclosure of work product developed by Amrep's general counsel during the course of his activities as a member of the defense team in this proceeding. The Government seeks to minimize the problem by mischaracterizing the scope of the work product privilege:

> "Of course, the work-product privilege is significantly more limited than the attorney-client privilege." (p. 118)

Its discussion of United States v. Nobles, 422 U.S. 225 (1975) makes no mention of the explicit statement by the United States Supreme Court that "the work product doctrine is distinct from and broader than the attorney client privilege" (at 238 n. 11) (emphasis added).*

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* The Government cites a second, equally speculative, basis for the possible loss of the attorney-client privilege at trial, namely, by the defendants predicating a good faith defense on the basis of legal advice received from Mr. Friend. (p. 135-136) Defendants herein may not choose to interpose such a defense or may establish good faith reliance upon the advice of other counsel. Furthermore, any waiver may well be limited rather than general. In any event, such a defense could not waive the work product privilege and would therefore in no way diminish the constitutional issues warranting severance.

3

While arguing for the sanctity of the "councils of the prosecution" at the grand jury stage of the proceedings** the Government, despite authority to the contrary,*** denies the existence of a reciprocal right to preserve the sanctity of the councils of the defense before that body. (see pp. 95-97) Furthermore, In re Terkeltoub, 256 F. Supp. 683 (S.D.N.Y. 1966) is claimed to be "of no application here" and United States v. Mitchell, 372 F. Supp. 1239 (S.D.N.Y. 1973) is claimed to have been wrongly decided on the basis of a passing observation by this Circuit in United States v. Colasurdo, 453 F.2d 585 (2d Cir. 1971), cert. denied, 406 U.S. 917 (1972). That observation merely distinguished the facts of *Colasurdo* from those of *Terkeltoub*. It did not purport to diminish either the vitality or scope of the latter. In any event, the compelling need for a severance here arises not from Mr. Friend's disclosures before the grand jury, but, rather, from the disclosure to be anticipated at a joint trial in violation of Amrep's Sixth Amendment right to the sanctity of the councils of the defense.

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* The Government mischaracterizes not only Nobles but the Colasurdo and Rosner cases as well, see discussion infra.

** See Government's Memorandum of Law in Opposition to Defendants' Motions for Discovery and Inspection, p. 27.

*** In Re Grand Jury Proceedings (Duffy v. United States), 473 F.2d 840 (8th Cir. 1973) relied significantly on Terkeltoub, infra, in upholding the right of an attorney to refuse to reveal materials prepared in connection with a pending grand jury investigation of his corporate client. The court ruled that the need for protection of an attorney's work product outweighs even the public interest in the search for truth. Id., 473 F.2d at 845.

4

The Government, citing *United States v. Rosner*, 485 F.2d 1213 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974), argues that Amrep proceeded at its own risk in maintaining its general counsel as a member of the defense team after he was called before the grand jury. (p. 125) Friend's activities as a member of the defense team were in fact curtailed after it became known that he was a target of the investigation (Winslow Aff. ¶8; Gallantz Aff., ¶5). But *Rosner* does not require the dismissal of a valued attorney simply because the Government decides to make him, as well as his client, a target of the investigation.

At issue there was the question whether a new trial should have been granted because, at the preindictment stage, potential co-defendants who were not attorneys, were claimed to have disclosed to the Government information learned at joint conferences with Rosner and his lawyers.* The Rosner court observed that such circumstances may give rise to a "common law" privilege, the breach of which "is not necessarily of constitutional dimension." (Id. at 1227) Here, Mr. Friend was himself a member of the councils of the defense and more is at stake than the possible violation of a common law privilege. If Rosner were extended to the facts of this case, the Government could with impunity eliminate and even destroy any lawyer simply by calling him a target of the investigation involving his client. Such a result would hardly advance the interests of justice and would do violence to the presumption of innocence.

5

The Government claims it is "contradictory" for Amrep to maintain that Friend is both Amrep's indispensable ally in the preparation of this case and at the same time potentially its most dangerous adversary at a joint trial. (pp. 124, 133) Reality does not necessarily accord with bureaucratic perception. Mr. Friend is both an attorney and an individual whose career and very liberty is threatened by the indictment in this proceeding. The personal tragedy, to say nothing of the legal wrong, in permitting a joint trial here would lie precisely in forcing Mr. Friend to abdicate his obligations as an attorney so that he may devote himself single-mindedly to his own defense.*

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* The court observed that there was "proof in [the] record that [the potential co-defendants] actually did not divulge anything." (Id. at 1226)

6

Citing Judge Weinfeld's opinion in United States v. Kahaner, 203 F.Supp. 78, 82 (S.D.N.Y. 1962), the Government implies that whatever conflicts may exist at a joint trial of Mr. Friend and his client could be resolved by appropriate instructions to the jury (p. 118). However, as the confusion in its own voluminous brief amply demonstrates, even lawyers would be hard-pressed to sort out and compartmentalize the evidence. Furthermore, the Government's extensive citation of authority cannot obscure the fact that a joint trial of Amrep and its general counsel would raise unique constitutional and evidentiary issues whose final resolution would have to await appeal. A grant of the requested severance would remove these issues from the case and would assure a fundamentally fair trial.

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* Defendants will not dignify by response the Government's suggestion that their arguments for severance are predicated upon a claim that Mr. Friend perjured himself.

Respectfully submitted,

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March 23, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

AMREP CORPORATION, et al.,

Defendants.

75 Cr. 1023 (CMM)

NOTICE OF MOTION
TO DISMISS OR SEVER

PLEASE TAKE NOTICE that, upon the annexed affidavits of Solomon H. Friend and Stanley Arkin, each sworn to January 23, 1976, and of Irving Parker and of Edward B. Winslow (submitted separately herewith), each sworn to January 22, 1976, upon the indictment, the grand jury transcript, and upon all other prior papers and proceedings herein, the defendant Friend will move this Court (Honorable Charles M. Metzner, U.S.D.J.), at the United States Courthouse, Foley Square, New York, New York 10007, on the second day of February, 1976, or at such other time as may be fixed by the Court, for an order:

(a) Dismissing the indictment as to defendant Friend, on the ground that, in grand jury proceedings, defendant Friend was deprived of his rights under the Fifth and Sixth Amendments to the Constitution of the United States, as more fully set forth in the moving affidavits herewith, or in the alternative, if the Court deems that sufficient facts have not been established for the determination of said motion, directing that an evidentiary hearing be held thereon;

(b) Dismissing the indictment herein, pursuant to Rules 7 and 12, Federal Rules of Criminal Procedure, on the ground that the said indictment, insofar as it relates to Friend, is unreasonably vague and indefinite, and deprives said defendant of his rights under the Fifth Amendment to the Constitution of the United States, or in the alternative, striking paragraphs 18(g)(xix)-(xxvi) of the said indictment as surplusage, on the ground that the same are inflammatory and prejudicial as to defendant Friend; or in the alternative;

(c) Dismissing Counts 71 through 80 of the indictment, as to defendant Friend, for the further reason that the same fail to allege any facts to negative the exemption contained in 15 U.S.C. §1701(5), which is applicable to defendant Friend;

(d) Directing, pursuant to Rules 8 and 14, Federal Rules of Criminal Procedure, that the case of defendant Friend be severed, for a separate and subsequent trial, as more fully set forth in a separate notice of motion submitted herewith;

(e) Granting to defendant Friend such relief granted to any co-defendant herein which is or may be applicable to the benefit of Friend;

(f) And for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
January 23, 1976

Yours, etc.

ROGERS & WELLS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - x

AFFIDAVIT
75 Crim. 1023 (CMM)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SOLOMON H. FRIEND, being duly sworn, deposes and says:

1. I am a member of the Bar of this Honorable Court. I have been named as a defendant in the instant indictment. I make this affidavit in support of my motion to dismiss this indictment because of the violations of my Constitutional rights arising out of the following circumstances.

2. In approximately March 1974, a Grand Jury subpoena was served upon AMREP Corporation, of which I am the General Counsel, requiring production of materials relating to a Grand Jury investigation concerning Rio Rancho Estates. Although I learned shortly thereafter that several officers of AMREP had been informed that they were targets of the Grand Jury investigation, at no time during the ensuing nine months was I so advised.

3. During those months I assisted, in my capacity as General Counsel for AMREP, in connection with the on-going investigation, as more fully described in other affidavits submitted in support of the motions herein for severance or dis-

missal.

4. On approximately January 27, 1975, I learned from Irving Parker, a member of the firm of Jacobs, Persinger & Parker, outside counsel for AMREP, that the same Grand Jury intended to subpoena me to appear at a hearing on January 28, 1975 concerning possible obstruction of justice arising from the alledged non-production of materials which the Grand Jury had requested, particularly the so-called "Henniger Report". I understood from Mr. Parker that Ms. Hynes, the Assistant United States Attorney in charge of the investigation, had told him that the subject of this hearing could involve me personally. I told Mr. Parker that I would appear and that I did not intend to retain a personal attorney concerning my appearance.

5. Before appearing at the hearing on January 28, I secured from AMREP a limited waiver of the attorney-client privilege only in connection with the events concerning the purported non-production of documents.

6. I appeared at the hearing as required and responded to all questions asked. I had no idea during that hearing that, in fact, I, personally, was also a potential defendant of the underlying investigation.

7. I learned of my status in that regard, for the first time, on January 28, 1975, after my appearance before the Grand Jury. Mr. Arkin, the attorney representing the individuals under investigation, related to me his conversation with Ms. Hynes the same day during which she had said that I was in the same category as the other individuals who were targets.

8. Also, sometime after approximately 4:00 P.M. on January 28, Ms. Hynes telephoned me at my office in response to a message I had left at her office earlier that day. In substance, Ms. Hynes said that she could not speak to me because I should regard myself a target of the main investigation.

9. As a result of this information, shortly thereafter I retained Rogers & Wells as my personal counsel in connection with the on-going investigation.

Solomon H. Friend

Sworn to before me this
23d day of January, 1976.

Notary Public

LEOCADIA [illegible]
NOTARY PUBLIC, [illegible]
No. 31-5[illegible]730
Qualified in New York County
Commission Expires March 30, 1976

A 8502

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

UNITED STATES OF AMERICA, :

v. :

AMREP CORPORATION, et al., :

Defendants. :

- -x

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

IRVING PARKER, being duly sworn, deposes and says:

1. I am an attorney and a member of Jacobs Persinger & Parker which represented AMREP Corporation ("AMREP") in connection with a Grand Jury investigation.

2. This affidavit is made pursuant to a request from William R. Glendon, Esq., a member of Rogers & Wells, the attorneys for Solomon H. Friend, Esq., to set forth my best recollection as to the circumstances leading up to Mr. Friend's first appearance before the Grand Jury on January 28, 1975.

3. At the time of the said representation by my firm, Mr. Friend was Senior Vice President and General Counsel of AMREP. Based upon certain conversations I had with Assistant United States Attorney Patricia M. Hynes on January 27, 1975, it was my understanding that she was interested in having Mr. Friend appear before the Grand Jury in connection with her desire to inquire into circumstances relating to the production by AMREP on January 8, 1975, before the Grand Jury, of a certain study prepared by

Harmon O'Donnell Henninger Associates, Inc. (the "Henninger Study").

4. More particularly, in conversations I had with Ms. Hynes on January 27, 1975, she asked me to inform Mr. Friend that she wanted him to appear to testify before the Grand Jury on January 28, 1975; that a subpoena *ad testificandum* addressed to Mr. Friend would be served upon him on January 28, 1975 just prior to such appearance; that the testimony sought of Mr. Friend related to the circumstances under which the Henninger Study had been produced; that this inquiry into such production was not merely a corporate matter but rather concerned Mr. Friend's personal involvement with the production of the Henninger Study; and that it might be appropriate for Mr. Friend to retain counsel. The substance of this information was conveyed to Mr. Friend who authorized me to inform Ms. Hynes that he would appear before the Grand Jury and that he would do so without being represented by counsel.

5. It is also my recollection that at no time during our conversations prior to Mr. Friend's appearance did Ms. Hynes indicate to me that Mr. Friend was a target of the Grand Jury's main investigation and, therefore, that I had no occasion to impart any such information to Mr. Friend.

Irvin [illegible]

Sworn to before me this
21st day of January, 1976.

Norman [illegible]
Notary Public

[illegible]
Notary Public, State of New York
[illegible]
Qualified in New York County
Commission Expires March [illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA	:	75 Cr. 1023 (CMM)
-against-	:	
AMREP CORPORATION, et al.,	:	NOTICE OF MOTION TO SEVER
Defendants.	:	

- x

PLEASE TAKE NOTICE that, upon the annexed affidavits of William R. Glendon and Stanley Arkin, each sworn to Januar 23, 1976, and the affidavits of Irving Parker and Edward B. Winslow, each sworn to January 22, 1976, submitted separately herewith, upon the indictment, the grand jury transcript, and all other prior papers and proceedings herein, the defendant Friend will move this Court (Honorable Charles M. Metzner, U.S.D.J.), at the United States Courthouse, Foley Square, New York, N. Y. 10007, on the second day of February, 1976, or at such other time as may be fixed by the Court, for an Order:

(a) Directing, pursuant to Rules 8 and 14, F.R.C.P. that the case of defendant Friend be severed for a separate and subsequent trial, on the ground that the joinder of Friend for trial with the other defendants is improper and prejudicial as to him, as more fully set forth in the moving papers herewith;

(b) Granting to defendant Friend such relief granted to any codefendant herein as is or may be applicable to the benefit of Friend;

(c) And for such other and further relief as to the

Court may seem just and proper.

Dated: New York, N.Y.

January 23, 1976

Yours, etc.

ROGERS & WELLS

By___________________________
A Member of the Firm
Attorneys for Defendant
Solomon H. Friend
200 Park Avenue
New York, N. Y. 10017
Tel. No.: (212) 972-7000

TO: Honorable Thomas J. Cahill
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10007
By: Patricia M. Hynes
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John Sprizzo, Esq.
Curtis, Mallet-Prevost, Colt & Mosle
Attorneys for Daniel Friedman
and Chester Carity
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New York, New York 10005

George G. Gallantz, Esq.
Proskauer Rose Goetz & Mendelsohn
Attorneys for Defendant
Amrep Corporation
300 Park Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, : 75 Cr. 1023

v. :

AMREP CORPORATION, et al., : AFFIDAVIT IN SUPPORT OF MOTION FOR SEVERANCE

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM R. GLENDON, being duly sworn, deposes and says:

1. I am a member of the firm of Rogers & Wells, attorneys for defendant Solomon H. Friend ("Friend"). I make this affidavit in support of the motion by Friend for an order, pursuant to Rules 8 and 14 of the Federal Rules of Criminal Procedure, directing that he be severed and tried separately from the other defendants named in the indictment. The statements contained herein are made on information and belief, except as otherwise noted:

2. A joint trial here would (1) deprive Friend of exculpatory evidence which is central to his entire defense, (2) result in the pursuit of mutually antagonistic defenses, (3) cause a government intrusion into the councils of the defense, and (4) further prejudice Friend by the inclusion of a mass of evidence relating solely to the alleged activities of other defendants, for almost a decade prior to the time he was employed as general counsel for defendant AMREP.

3. Mr. Friend was first employed by defendant AMREP in 1970, as Vice President and General Counsel, nine years after the alleged "scheme" is supposed to have commenced.* Unlike other individual defendants, Friend took no part in the origin of the Company or the initiation of its sales programs, was not a financial principal, was not a member of the executive committee, and had no authority over the making of sales policy. Friend was employed in 1970 in order to organize a Law Department for defendant AMREP, which prior to the time was represented by outside counsel. He was subsequently given the titles of Senior Vice President and Director; however, apart from some duties with the construction department and miscellaneous minor functions, which do not appear to be involved in this case, Friend acted primarily in a legal capacity. The basis of his defense will necessarily depend upon a full disclosure of his services, communications, advice, and knowledge received in that capacity.

4. Unlike the other individual defendants herein, Friend waived his privilege under the Fifth Amendment, and testified freely before the grand jury on eleven separate occasions. Throughout his testimony, Friend emphasized

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* Mr. Friend has practiced actively in the State and Federal courts for twenty-seven years. He has been Chairman of the Food and Drug Committee of the Federal Bar Association of New York, New Jersey and Connecticut; a panel Chairman of the White House Conference on Food, Nutrition and Health; a Subcommittee Co-Chairman in the Administrative Law Section of the American Bar Association; and Counsel to the House of Representatives Advisory Committee on Oceanography and Underseas Development. He has been a member of the faculty of the Practicing Law Institute, has contributed to two PLI treatises on land acquisition and development, and has lectured at universities on the same subject.

the point which will also be the heart of his defense at the trial: that he performed his duties as a lawyer in good faith, made diligent and continuous efforts to see that his clients complied in all respects with the law. In testifying to this effect, however, Friend was continually handicapped by his efforts to comply with the attorney-client privilege. As he stated at one point to the prosecutor (Transcript of July 29, 1975, morning session, page 6):

> "That is the problem I have, Ms. Hynes, I can't tell you everything as much as I want to because the company has not waived my attorney-client privilege, and I cannot therefore tell you the things that I did that I know were done honestly."

5. In the course of Friend's testimony, the grand jury specifically inquired as to internal memoranda, involving privilege and attorney's work product, which Friend stated would tend to exculpate him. When the corporation declined to waive the privilege, I applied on Friend's behalf for an order permitting him to produce the documents in question, on the basis that he was entitled to reveal privileged matter in order to defend himself against an accusation of wrongful conduct, under Disciplinary Rule 4-101(C)(4). That motion was granted, in an opinion by Judge Duffy, a copy of which is annexed hereto as Exhibit A. As appears from Exhibit A, Judge Duffy noted the continuing objection of the corporation to the production of privileged documents.

6. Pursuant to that order, approximately seventy exculpatory documents were produced. Although they do not fully indicate the range of the exculpatory evidence which

Friend would seek to offer at trial, they are illustrative of the type of subject matter involved. For example, on November 11, 1970, Friend sent the following memorandum to the principals of the company:

> "I feel it is important that a meeting of the regional managers be held as soon as possible for an orientation as to the procedures to be followed in each sales office, contracts to be used, and to insist on closer supervision of the literature, and procedures used in each sales office.
>
> "Frankly, the instances are becoming more and more frequent whereby unauthorized literature is printed and distributed, contract [illegible] used without submission to the legal department, wrong purchase agreements are used, etc.
>
> "Furthermore, most of the complaints we receive from state agencies relate to statements allegedly made by salesmen or practices contrary to company policy. Some of these consumer complaints emanate more frequently from certain offices than other offices.
>
> "In this business, it is my considered judgment that we must be more chaste than Caesar's wife and that the above aspects of our operation must be tightened up.
>
> "Such an orientation session can be scheduled for the next regional managers meeting but if that is a long way off, I think the above deserves a special meeting. Your thoughts are most welcome."

Implementing that memorandum, I am informed and believe that a sales meeting was held at which these problems were aired and appropriate instructions were given, and testimony to that effect would be offered, in detail, at the trial. Other instances of Friend's continuing efforts to avoid improper behavior by salesmen, and his numerous confidential conversations with his clients on this subject, would also be explored in detail through his testimony at the trial.

7. Also produced were a series of memoranda relating to the 1972 revisions made in the advertising and promotional materials, at Friend's direction -- the revisions which the indictment (paragraph xxvi, pages 16-17) disparages as mere efforts to "shade and qualify" the promotional language. In the course of a memorandum of February 17, 1972, Friend made the following comments to the officers of the company, in reporting on a meeting of the Interstate Land Sales Group:

> "Conclusion: The above reinforces my previous concern that all reasonable steps should be taken to avoid improper references to an investment theme particularly in printed advertising, and to properly control salesmen's oral representations concerning resale investment or guarantees.
>
> "In this connection, as previously discussed with Hank Hoffman, our Rio film and other Rio material should be revised as soon as the film and advertising departments can get to it."

At trial, Friend would testify in extensive detail as to the circumstances behind this memorandum, and his confidential conversations with his clients on this subject.

8. As appears from the foregoing, I anticipate that it will be necessary to offer on his behalf, not only documents, but extensive testimony as to privileged confidential communications between Mr. Friend and his clients. By way of example of the foregoing, there are set forth a few instances where Mr. Friend's testimony would relate to legal advice given as to specific allegations of the indictment.

(a) Thus, throughout the indictment (Paras. 14, 15, 18(g), (i), (j)), there is the recurrent charge that AMREP sold land for investment. Mr. Friend would testify as to repeated and specific advice given the clients concerning the use of the word "investment", and the clients' response thereto, insofar as he was aware.

(b) Again, the indictment (Para. 18(o)) attacks the legality of the previously existing exchange provisions. Mr. Friend would testify as to his understanding of those provisions and the advice he gave as to implementing the same.

(c) The indictment charges (Para. 18(g)(xi)) that to create "a false impression of general agreement" at the dinner parties of the desirability of lots, salesmen would rise and conspicuously call "holds" on particular lots to falsely suggest that sales were being made. Mr. Friend would testify as to advice given by him, pursuant to federal and state regulations, concerning this matter.

(d) The indictment charges (Para. 18(g)(xx)) that the defendants conducted sales meetings in a manner which would conceal the Property Reports from prospective purchasers. Mr. Friend would testify as to the advice he gave pursuant to federal and state regulations concerning this matter.

(e) A major and recurrent allegation (Paras. 14, 15, 16, 18(i), 18(j), 18(1)) is that the defendants sold the land with representations that there would be a readily available resale market when in fact they knew there was none. Mr. Friend would testify with respect to his advice given on this subject, and his clients' response to such advice.

(f) Friend would testify as to the effect which the changing federal and state regulatory oversight and control had on the Rio Rancho operations, including sales techniques, advertising materials, oral representations, property rights and contract provisions, and his advice [illegible] respect thereto.

9. The foregoing are a few examples of the nature and substance of Mr. Friend's testimony in response to the allegations of the indictment. I believe it would be exculpatory in nature. If the government can adduce evidence, and I do not suggest that it can, in support of its allegations, Mr. Friend's testimony, while helpful to him, would be obviously prejudicial to his clients.

10. It seems likely that counsel for other defendants would object to the disclosure of such privileged communications. This position would be readily understandable, and obviously Mr. Friend would not welcome the prospect of divulging confidential communications, to the detriment of his clients, in the course of a joint trial. However, if this is necessary, then as Mr. Friend's counsel I will have no choice but to introduce such evidence. I believe, for the reasons cited in Judge Duffy's opinion,

that Mr. Friend will be entitled to offer such testimony, whatever the consequences to his clients. Thus there would arise, in a joint trial, the unedifying spectacle of an attorney being forced to disclose communications given and received in the strictest confidence, which his oath would otherwise compel him to retain in confidence.

11. Besides Mr. Friend's own testimony, however, there are other sources of evidence which are vital to Mr. Friend's defense, and as to some of these it is not at all clear that Mr. Friend would have them available in a joint trial.

12. Thus, Friend was the head of the law department of defendant AMREP, and had other attorneys, [illegible] employed by the corporate defendant, working under him in the complex functions of advising the company as to compliance with the applicable federal and state laws. Before the grand jury, Friend testified that he continuously emphasized to his subordinates the importance of complying rigorously with all aspects of the law, and to exert every effort to ensure such compliance. Thus, with respect to the disclosure in the contract that AMREP did not repurchase land from customers, Friend gave the following testimony (Transcript of July 29, 1975, afternoon session, page 31):

> "I wrote a memorandum to Arthur [illegible] [one of AMREP's house counsel] at the same time of the month of the time that we worked on the film, and I said to Arthur that I wanted that language about no resale put on the face of the contract.
>
> "Q What was the language you wanted on the face of the contract?

> "A I will tell you. He wrote back to me, and he said he would like to put it on the back of the contract, and he would only like to refer to the words that the company does not repurchase land.
>
> "And, I had a conversation with Arthur, and I said, 'Arthur, look, I am the boss of this legal department, not you. I want the language on the front of the contract, and I want the reference to no resale put on the front of the contract so that it is clear and conspicuous, and do it.'"

Similarly, with respect to the training of salesmen and the investigation of complaints, Friend testified (ibid, page 30):

> "First, let me point out that when I got these reports from Bob Brown [a paralegal in the AMREP Law Department] and from Teddy [illegible] [one of the house attorneys], I asked them almost constantly, I said, 'Ted, let me ask you this, are these complaints old sales or new sales,' because I wanted to know whether the recommendation that I and the legal department had made to correct this were working.
>
> "For example, the training program of salesmen, that was my idea. I recommend to Danny Friedman, as to training salesmen,* you can't turn them loose, and he did [set up a training program]."

At the trial, I would expect to offer otherwise privileged testimony concerning the communications leading up to these and other privileged memoranda.

13. I have been informed and believe that several of AMREP's present and former house counsel made statements corroborating Mr. Friend's testimony in these areas, and have indicated a willingness to testify on his behalf if they are permitted to do so. As trial counsel for Mr. Friend, I would probably seek to call these attorneys as witnesses, and to elicit their testimony in corroboration of Friend's

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* Through a stenographic error, the transcript reads "as a trainee-salesman".

diligence and good faith in the discharge of his legal duties. Inevitably, this would involve extensive del[illegible] into areas of privilege, work product or both; further, these attorneys were closely involved with Friend in the councils of the defense, during the nine months of the investigation before he was notified that he was a target. In this instance, also, counsel for other defendants are likely to assert the privilege and resist the introduction of the exculpatory testimony. In the event that such evidence were excluded, it would then be Friend who clearly would be deprived of a fair trial.

14. If Friend and the other defendants are tried jointly, I intend to argue that the other attorneys for AMREP should be allowed to testify, under the provisions of the Code of Professional Responsibility, Disciplinary Rule 4-101(C)(4), permitting the disclosure of confidences by an attorney when necessary "to defend himself or his employees or associates against an accusation of wrongful conduct" [emphasis supplied]. I believe that it can be reasonably argued that Friend's subordinates in the Law Department of defendant AMREP should be considered "associates" within the intent of the Rule. However, no authority has been uncovered on this point, which I believe would be a case of first impression. Further, the language of the Rule is permissive, stating that a lawyer "may" reveal privileged communications under the circumstances specified. Some of the attorneys in question are still employed by defendant AMREP, and even if the rule is interpreted favorably to Friend, there is at a minimum serious doubt whether AMREP's attorneys would choose to testify as to confidential communications, over AMREP's objection, in a joint trial. In a

separate and subsequent trial there would presumably be no reason for AMREP to interpose such an objection.

15. A similar, and perhaps even more difficult, problem is presented with respect to outside counsel for AMREP. I am informed and believe that several outside attorneys for the corporation have indicated that they would be able and willing to testify as to Friend's good faith and diligence in the discharge of his legal duties. These include Edward Winslow, Esq., of Jacobs, Persinger & Parker; Theodore Montoya, Esq., who was outside counsel to the corporate defendants in New Mexico, and Max Li[illegible], Esq., as attorney for the corporate defendants in Missouri. Normally these attorneys would be called as witnesses for Friend at the trial, and their testimony also would necessarily refer to confidential and privileged communications, together with possibly more complex questions as to whether the outside attorneys were "associates" of Friend within the meaning of the Disciplinary Rules. Again, at a separate and subsequent trial, the likelihood is that the other defendants would no longer seek to object to such testimony.

16. Still another problem is presented under the doctrine which has sometimes been referred to as "councils of the defense". The investigation of defendant AMREP commenced in March, 1974. It was not until the end of January, 1975, that Mr. Friend was advised that he, individually, was a target of the investigation. In the intervening nine months, Friend, as AMREP's General Counsel, played a major role in the preparation of AMREP's defense.

As further set forth in the affidavits of Stanley Arkin and Edward Winslow, which are being submitted simultaneously herewith, Friend participated in virtually every meeting of defense counsel, generally supervised the production of documents, was privy to the discussions of defense strategy and tactics, assisted in preparing various motions, and generally was familiar at every stage with the defense being prepared both by AMREP's Law Department and by outside counsel. Throughout this period, before he was aware of his own status as a target, Friend was extensively involved in advising the other defendants herein. Counsel for other defendants can be expected to take the position that testimony as to knowledge which Friend acquired in this period should not be admissible, even apart from the attorney-client privilege, on the theory that to invade the counsels of the defense would deprive the other defendants of their rights under the Sixth Amendment.

17. This position may well be correct. Yet, if the allegations in the indictment are proven, the question of Mr. Friend's knowledge could be important to his innocence or guilt. If he is precluded at the trial from testifying that he first learned of any particular event during his service as a member of the defense team, then he is stripped of a significant aspect to his defense. By way of hypothesis, if Mr. Friend advised a client not to undertake Program A, was assured that this advice was being followed, and only learned of the disregard of this particular advice while preparing the client's defense, he should be entitled to present this evidence to the jury. At a joint trial, however, disclosure of such facts would be prejudicial to the

client, would represent an intrusion into the councils of defense, and might be excluded. At a subsequent and separate trial, the arguments against utilization of this testimony would no longer exist.

18. Specifically, in defending his conduct as an attorney before the grand jury, Friend found himself repeatedly obliged to refer to discussions with other attorneys in which he had participated after the start of the investigation. For example, one of the facets of the alleged "scheme" (Indictment, paragraph 18(o)), is stated to be the non-disclosure that utilities were not provided for so-called "commercial" and "multiple dwelling" lots. On the subject, Friend's testimony in response to the prosecutor's questions, was as follows (Transcript, October 21, 1975, page 60):

> "Q What was the provision for providing utilities for people that bought commercial and multiple dwelling lots?
>
> A From what I learned recently, none.
>
> Q How did you learn that?
>
> A When you subpoenaed --
>
> Q Who did you learn it from?
>
> A I learned it from Ted Schreier [an attorney in AMREP's Law Department]."

19. Similarly, on the subject of water rights (Indictment, paragraphs 18(p), (q)), Friend was questioned before the grand jury as to the failure to complete certain wells upon which claims of water rights were based, and he testified that he first learned of the failure to complete them while working on the brief for the other defendants in

the grand jury investigation (Transcript, September 4, 1975, afternoon session, pages 69-70; September 9, 1975, morning session, page 13). With respect to the allegations pertaining to "ranchettes" (indictment, paragraph 18(o)(xviii)), he testified that he did not learn of the sales practices in question until after commencement of the investigation, and that when he did learn about them, he advised the clients to stop selling "ranchettes" (October 21, 1975, afternoon session, pages 62-4). Additional instances can be expected to arise in Mr. Friend's testimony at trial, and he will presumably be called upon on cross-examination if and when he finally acquired such information -- the answer to which would involve his conversations with other counsel or clients in connection with the investigation.

20. Further, it may be difficult even to determine the extent to which "councils of the defense" would be involved in Friend's exculpatory testimony. For the first nine months of the investigation, unaware that he was himself a target, Friend continued in the normal discharge of his duties as General Counsel. Accordingly, it is not surprising that, several times in his testimony before the grand jury, he was unable to recall whether he acquired particular items of information before or after the investigation began. Thus, at the afternoon session on September 4, Friend gave the following testimony with respect to water rights (page 60):

> "Q No. What did you say when you first
> found out about leasing rights back?
>
> "A That they could be leased back?
>
> "Q You say you only --

"A I might have found out -- might have found out. I found out -- you know, since you started this investigation in March of 1974 I've lost track of when I learned certain things.

"Q But at least you knew about the leasing --

"A In the past year I found out about it.

"Q You knew about the leasing in July of '74.

"A I apparently did."

21. The problem as to the councils of the defense is one which, in a real sense, has been created by the government. By waiting nine months before advising Friend that he was a target, while aware that Friend was active in the councils of the defense, the government has placed both Friend and the other defendants in an impossible position. Neither Friend nor the other defendants should be prejudiced as a result thereof.

22. Further, in seeking to establish that Friend counselled his clients in good faith, the other natural source of corroborating evidence would be the clients themselves. Normally I would call the individual defendants herein as witnesses in Friend's behalf, to confirm his testimony as to his diligence and concern for insuring that the corporation acted properly and lawfully, and his persistent efforts to impress on all concerned the need to do so. As noted above, however, all of the individual defendants except Friend have invoked their privilege under the Fifth Amendment, and they may not testify at the trial.

23. If Friend's case is severed and tried subsequently, it might well be that at the time of his trial, such

a privilege for the other defendants would no longer exist, either because their cases have been disposed of, or otherwise. In a joint trial, however, defendant Friend would be precluded from calling witnesses who are vital to his defense. Further, Friend's counsel might not even be permitted to point out that his testimony, as to the advice which he gave his clients, had gone uncontradicted. Similarly, Friend's testimony would not have been corroborated by the persons best able to do so; yet, counsel for Friend would not be permitted to explain to the jury why it had not been corroborated.

24. By no stretch of the imagination can the evidence discussed above be characterized as cumulative or unimportant. If Friend is deprived of the testimony of his associates in the Law Department, of outside attorneys for the corporation, and of his clients -- and *a fortiori* if he is blocked from areas of his own testimony by claims of common law or constitutional privilege -- a fair trial for him would be manifestly impossible.

25. The indictment herein charges (Paragraph 13) that the "scheme" here involved was devised "from on or about January 1, 1961". Although the same paragraph lists defendant Friend as being a participant, the indictment elsewhere discloses on its face (Paragraph 10) that he did not become general counsel of defendant AMREP until 1970. It is apparent from the indictment that the greater part of the government's case will be devoted to the alleged activities of other defendants, continuing for almost a decade before

Friend had any connection whatever with AMREP, during years in which AMREP was represented by other counsel. The trial may well continue for weeks before Friend's name is ever mentioned from the witness stand.

26. The disparity between the evidence as to Friend and as to the other defendants is not merely one of quantity. Friend made extensive revisions in the advertising and promotional materials, limiting the scope and breadth of the company's claims: indeed, the government has recognized as such, although the indictment seeks to denigrate Friend's efforts by stating that they only "shade[d] and qualified[ied]" the advertising (Paragraph xxvi, pages 16-17). It is submitted, however, that the changes made by Mr. Friend made a dramatic qualitative difference, as is indicated by a few examples on which he was examined in his grand jury testimony:

> "Q In any event, the audio is 'Yes, look at this choice location. Rio Rancho Estates directly adjoins metropolitan Albuquerque * * * in a growing neighborhood where real estate values are constantly rising.'
>
> " Then there is a line through [deleting] 'where real estate values are constantly rising'."
>
> * * *
>
> "Q What are the reasons for crossing out 'where real estate values are constantly rising'"
>
> "A Because in my opinion as a lawyer for the company, it constituted a representation, implied if not expressed, that people should purchase the land because of an expectation that they would make money by rising values of the land.
>
> "Q That they should purchase Rio Rancho land?
>
> "A Yes. I thought it should go out."
> (September 11, 1975, morning session, page 17.)

"Q Now, I will go back to the text. [quoting]

> 'Ten years ago you could buy it raw for under 1,000 an acre. Today, improved, it brings 6,000 an acre and up.
>
> 'Here is property in a community directly adjoining Rio Rancho Estates. Ten years ago you could buy it raw for under $1,000 an acre. Today, improved, it brings $12,000 an acre and up. The explanation, supply and demand. People who have poured in and demand homes, prices that have gone up and up as the supply of desirable homesite land grew smaller and smaller.'

"Q There is an 'X' through the two paragraphs which I just read. Is that your marking?

"A I believe it is. [illegible] only [illegible] cross entire two paragraphs out, but I put markings on the margins of both to make sure that it was not missed and would go out.

"Q What was the reason for marking these statements to go out?

"A Because as the regulations had then changed, it was my considered judgment that even though the statements were literally true, or may be literally true, that land prices in Albuquerque have redoubled and redoubled again and again, you cannot, and you should not, and you could not under the law and the regulations as it then had evolved, imply, and this was an implication, the same thing could happen to Rio Rancho.

" That is the reason as my being the lawyer for the company I took it out." (Ibid, pp. 19-20).

"Q Continuing on page 11, there is a statement 'Yes, the land boom is on in Albuquerque and as demand for land increases, prices are starting to show it.'

" There is a mark next to it with notation made. Is that your marking?

"A 'Yes, I struck out the entire sentence and substituted instead of that the following:

" 'Yes, the demand for land in the Albuquerque area is on the rise', which I think is a substantial difference.

"Q Why did you change that statement?

"A Because it also talked about increasing land prices and created the impression that I mentioned before, namely that if you bought land anywhere in the Albuquerque area, including Rio Rancho, it could produce a profit for the person.

" In other words, this sentence as it originally was written was oriented to a speculative theme of potential profit, and I thought that the statement should be changed.

" I never liked the word 'land boom', it was one of my hangups. I thought it was reminiscent of the gold rush days, so I took it out." (ibid. p. 281).

"Q On page 12 there is a statement 'But real estate --' let me back up and read it in context.

"The statement talks about inflation beginning in the middle of page 12 [quoting]

> 'Inflation is on the march. Since 1940 alone the inflation monster has eaten away more than 60 percent of your dollar. That means if you or I had put away $1,000 in cash all these years, you could only buy about $397 worth of goods with it today. And financial authorities tell us that next year -- and in the years to come -- our dollars -- our savings and other fixed income such as bonds and dividends, pensions and annuities -- will buy less and less. But real estate land, this will stand up against inflation -- can only increase in value as inflation gallops ahead.'

"Q Now, you changed some language in the paragraph 'But real estate will stand up,' et cetera?

"A Let me see if I can read it.

" This is a suggested revision that I made. The statement said 'But real estate-land, this will stand up against inflation' I changed. 'But on the average, real estate in the United States has tended to stand up against inflation, has increased in price as inflation gallops ahead.'

" That is how I changed that, and I think I change it accurately. (ibid. pp. 30-32)

"Q On page 13 the script states

> 'Yes, in this booming resort area where it has been typical for land prices to jump 200 percent, 300 percent, even more in a few short years. You can control choice acreage worth thousands of dollars right now -- all you need is a small deposit.'

"A I struck it out.

"Q You struck that statement out?

"A Yes.

"Q Why?

"A Because the regulation did not allow you to create, directly or indirectly, an investment scheme." [illegible] 3, pp. [illegible]53)

It is difficult to apprehend the reasoning process by which these and other changes were characterized (Indictment, Para. xxvi, pp. 16-17) as merely "shad[ing] and qualify[ing]." It is clear that the impact of the material revised by Friend is substantially different from that which was in use previously, and that Friend will be substantially prejudiced if he must contend with a welter of accumulated evidence about events of a decade preceding his arrival at AMREP, even though the materials then in use had been submitted to and cleared by the appropriate regulating bodies.

27. To place Friend in this position would, I submit, be grossly unfair. Mr. Friend came to AMREP as general counsel, almost a decade after the beginning of the alleged scheme, after a substantial and respected career in the practice of law. He came to an American Stock Exchange company* in a highly regulated industry, which over the years had been subject to continuing regulation by federal

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* Later listed on the New York Stock Exchange.

and state regulatory agencies. Prior to the arrival of Friend, AMREP's filings with those agencies, and its other legal affairs, had been handled by responsible outside counsel, and there was every reason for Friend to assume that he could rely on the regularity of prior proceedings. I submit that Friend should be judged on his own actual record as general counsel to AMREP, and that the facts as to his conduct should not be buried under a mass of material relating to events before his arrival, for which in all fairness he cannot be held responsible. This is particularly so when the fact that all these [illegible] regulated by federal and state authorities, is likely to be obscured by today's vogue of consumerism.

28. If a severance is granted in the interest of justice, the Court need not be faced with the prospect of two lengthy trials. Even if there were a second trial as to this peripheral defendant, Friend might be well advised to weigh the possibility of waiving a jury, and a trial to the Court could be conducted in large part on stipulated evidence from the preceding trial. Weighed against the obvious prejudice of a joint trial, the possibility of any prejudice to the government from a second trial is remote indeed.

29. Further, it is unlikely that a joint trial herein would serve even the objectives of economy. As set forth above, such a joint trial would inevitably produce numerous difficult questions of attorney-client privilege, work product, and constitutional issues relating to councils of the defense. Apart from the loss of time involved therein, many of these issues lack any clear authority, and the

likelihood of appeals, and possible new trials, would be correspondingly increased.

30. In summary, it seems clear that Friend, in a joint trial, would be gravely prejudiced by the accumulation of evidence relating only to other defendants. Further, it is apparent that multiple problems would arise at a joint trial from the fact that the defendant Friend was general counsel to the other defendants, and an active member of the defense team on this investigation. Any attempt to resolve the conflict by precluding Friend from introducing evidence, would inevitably deprive Friend of a fair trial. I submit that it would be far better to resolve these conflicts by severing Friend's case, and thereby avoiding the necessity for him to disclose confidential communications, with resulting unseemly conflicts between an attorney and his clients, that could only be prejudicial to the parties, to that relationship, and to the orderly administration of justice.

WHEREFORE, I respectfully request that the motion of defendant Friend be granted in all respects.

William F. Glendon

Sworn to before me this
23d day of January, 1976.

Notary Public

[illegible]
[illegible] York
[illegible]
[illegible]
[illegible] 1977

A 8528

COPY.

#43248

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------------x

IN THE MATTER OF THE APPLICATION :

OF :

SOLOMON H. FRIEND :

--------------------------------------x

MEMORANDUM AND ORDER

M-11-188

S. DISTRICT
FILED
OCT 15
S. D. OF

APPEARANCES:

HONORABLE PAUL J. CURRAN
United States Attorney
Attorney for the Government
By: Patricia N. Hynes, Esq.
Asst. United States Attorney
Of Counsel

JOAN DACEY, ESQ.
Attorney for Amrep Corporation

WILLIAM R. GLENDON, ESQ.
GUY C. QUINLAN, ESQ.
Attorneys for Movant-Applicant

STANLEY ARKIN, ESQ.
Attorney for Certain Officers of
Amrep Corporation

KEVIN THOMAS DUFFY, D.J.

Solomon H. Friend, an attorney, has applied for leave to turn over certain documents to a United States Grand Jury which is apparently investigating both his client Amrep Corporation and Mr. Friend himself. Mr. Friend has testified a number of times before the Grand Jury and has been invited by the Assistant United States Attorney in

EXHIBIT A

charge of the case to produce any documents which Mr. Friend believes would exculpate him. Mr. Friend alleges that the documents which are the subject of this application would help to establish that he acted in a good faith effort to insure Amrep's compliance with the law and that consequently he should not be indicted.

The documents are divided into the following four categories:

(1) those as to which the corporation asserts an attorney-client privilege; (2) those already held to be privileged by other judges; (3) those as to which no privilege is asserted which have not yet been submitted to the Grand Jury; and (4) those as to which no privilege has been asserted and which have already been turned over to the Grand Jury.

As to those documents falling into categories (3) and (4) there is apparently no dispute. Accordingly, Mr. Friend may turn them over to the Grand Jury.

As to those documents within categories (1) and (2) the corporation, Amrep, asserts its attorney-client privilege since the government is unwilling to stipulate that the failure to assert the privilege would not constitute a waiver of the privilege as to matters and documents not presented in this application.

The government and Mr. Friend contend that, pursuant to the Code of Professional Responsibility, Disciplinary Rule 4-101(C),*/ Mr. Friend is entitled to turn over the documents to the Grand Jury. See Meyerhofer v. Empire Fire and Marine Insurance Co., 497 F.2d 1190 (2d Cir. 1974). I agree. Accordingly, Mr. Friend may turn over those documents falling into categories (1) and (2).

I note, however, the continuing assertion by the corporation of its attorney-client privilege with respect to these documents.

SO ORDERED.

U. S. D. J.

Dated: New York, New York
October 15, 1975

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*/ DR4-101(C)(4) provides in pertinent part:
"(C) A lawyer may reveal:
(4) Confidences or secrets necessary . . . to defend himself or his employees or associates against an accusation of wrongful conduct."

Although, as yet, no formal accusation has been made against Mr. Friend, it would be senseless to require the stigma of an indictment to attach prior to allowing Mr. Friend to invoke the exception of DR4-101(C)(4) in his own defense.

A 8531

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

-against- : AFFIDAVIT

AMREP CORPORATION, et al., : 75 Crim. 1023 (CMM)

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STANLEY S. ARKIN, being duly sworn, deposes and says:

1. I am the attorney for the defendants Howard Friedman and Henry L. Hoffman. I make this affidavit in support of the motions of the defendant, Solomon H. Friend and the corporate and individual defendants, pursuant to Rule 14 of the Federal Rules of Criminal Procedure to sever Mr. Friend's trial from that of other defendants and the motion of the defendant Friend to dismiss the indictment as to him because of violations of his Constitutional rights.

2. On March 29, 1974, a grand jury subpoena was served on the defendant, AMREP Corporation, requiring extensive production of documents in connection with a grand jury investigation of AMREP's Rio Rancho subsidiary. AMREP was represented during the course of this investigation by its outside counsel, Jacobs, Persinger & Parker. Shortly after service of the subpoena, I was retained to represent Messrs. Howard and Daniel Friedman and Messrs. Carlly, Hoffman, and Blum, as well as other

officers of AMREP who were potential targets of the investigation. During the course of representation in the period March 1974-January 1975, I had numerous conferences with representatives of the United States Attorney's office for the Southern District of New York and at no time prior to January 28, 1975 was any indication whatsoever given me that Solomon H. Friend was a target of this investigation.

3. Mr. Friend in March 1974 was a Senior Vice President and, more particularly, General Counsel of AMREP. During the period March 1974-January 1975 I worked closely with Mr. Friend as a member of the defense team in connection with the investigation. Mr. Friend participated actively in the defense of the case and in the coordination of the activities of the two separate defense firms and acted as principal liaison with the company. In such capacity I had almost daily personal or telephonic conferences with him. We worked closely together developing defense strategy and tactics. Mr. Friend was privy to my thinking and efforts on behalf of the defendants whom I represented, and I am confident he shared with me his complete thoughts and ideas on the problems confronting our clients. I communicated with Mr. Friend on a regular basis seeking information and assistance in connection with the preparation of a defense. He participated to some extent in the gathering of documents subpoenaed from AMREP and its subsidiaries and shared in the evolvement of the defense strategy.

4. Mr. Friend contacted various past and present employees, and often assisted me to interview them, participated in discussions with witnesses who were to testify, and often joined in the debriefing of witnesses who had appeared

before the grand jury. All motions, affidavits, and legal memoranda submitted by either of the attorneys were reviewed by Mr. Friend. In real terms, Mr. Friend was in every sense an invaluable member of the defense team, participating in counsels' day-to-day deliberations, tactics, and decisions with respect to the investigation.

5. In January 1975, the Assistant United States Attorney in charge of the investigation, Ms. Patricia Hynes, advised us that she was concerned as to the non-production of a particular subpoenaed document, sometimes called the Henniger Report, and utilizing the same grand jury, commenced an investigation of a possible obstruction of justice. Ms. Joan Dacey, an attorney with the firm of Jacobs, Persinger & Parker, was called before the grand jury and, I am advised, explained that the collection of documents was handled by AMREP's legal staff. Mr. Friend who, as General Counsel had the ultimate responsibility for the collection of documents, appeared before the grand jury on January 28, 1975, and testified. This, insofar as I am aware, was the end of that investigation.

6. Up to the date of his grand jury appearance, insofar as I am aware, there had never been any indication from the government that Mr. Friend was considered a target of this investigation. On the afternoon of January 28, 1975, following Mr. Friend's grand jury appearance above described, I met the prosecutrix, Ms. Hynes, in the corridor of the Federal courthouse. During the course of our conversation, I questioned the necessity and the propriety of her obstruction of justice investigation and particularly the calling of Ms. Dacey before

a grand jury in connection therewith. During this conversation I inquired as to who Ms. Hynes considered to be a target of the principal investigation. She replied in words or substance that she could not say at that time that any of my clients were not targets. I inquired if this applied to Mr. Friend as well, saying that I could not believe that there was the remotest possibility of even his being considered as a subject of the investigation. To my amazement Ms. Hynes informed me that she considered Mr. Friend in the same light as the others. Later the same day I recounted this conversation to Mr. Friend.

7. Shortly thereafter, Mr. Friend, acting on the foregoing information, retained [illegible] & [illegible] as his personal counsel.

8. Now with Mr. Friend as a defendant at a joint trial, my clients and former clients run a grave risk that if he testifies in his own defense, information he gained in the course of our joint investigations as a member of the councils of defense would be the subject of his testimony. To my mind, it would be virtually impossible for him to isolate this constitutionally protected information from other knowledge he may have had. The risk of a breach of my clients' constitutional rights approaches extraordinary levels if for some reason Mr. Friend ever adopted a defense antagonistic to the other defendants.

9. The spectre of a lawyer who acted as a defense counsel on a criminal case using information learned in that capacity to defend himself in a manner hostile to the interests of his former clients, the co-defendants, in the very same case is an ugly and outrageous one indeed.

10. Severance of Friend is the only possible remedy to protect the other defendants. And the government's failure to properly warn Friend of his rights before he testified at the grand jury hearing on January 28 should result in dismissal as to him and suppression of his testimony.

Stanley S. Arkin

Sworn to before me this
23rd day of January, 1976.

ALICE LYNN [illegible]
Notary Public, [illegible]
31-4525272 - New York County
Commission Expires March 30, 1976

A 8536

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

AMREP CORPORATION, et al.,

Defendants.

Index No.
75 Cr. 1023

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWARD B. WINSLOW, being duly sworn, deposes and says:

1. I am a member of the firm of Jacobs Persinger & Parker which has served as outside legal counsel to AMREP Corporation ("AMREP") since February 1968. From 1962 until February 1968 I was a member of the firm of Royall, Koegel & Rogers which served as AMREP's outside legal counsel during that period, and while a member of both firms I have been in charge of the AMREP account. I am fully familiar with the facts stated herein and submit this affidavit in support of AMREP's motion for an order pursuant to Rule 14 Federal Rules of Criminal Procedure directing that the defendant, Solomon H. Friend, AMREP's General Counsel, be tried separately from the other defendants.

2. By 1968 the volume of AMREP's legal work had reached such a high level that I recommended to the client that it consider organizing an in-house legal department, and it hired its first attorney that year. In 1969 management of AMREP made the determination that AMREP should have a legal department with the competence of handling substantially all of its routine legal matters, and decided to

retain Mr. Friend, having first consulted with me. Mr. Friend became Vice President and General Counsel of AMREP in 1970 and in time AMREP's legal department grew to include five additional lawyers.

3. At the time Mr. Friend assumed his new responsibilities and thereafter he consulted with me concerning AMREP's legal problems, and we worked closely together to effect an orderly transition of legal duties and responsibilities to him and his staff. The transfer of responsibilities from my firm to the AMREP in-house legal department took place gradually over a period of time, and until late 1971 my firm still retained responsibility for compliance with the Federal Interstate Land Sales Full Disclosure Act and the New York laws regulating the sale of subdivided lots. However, by the end of 1971, the AMREP legal department had assumed responsibility for compliance with all State and Federal laws regulating the sale of subdivided land. My firm continued to retain responsibility for S.E.C. registration and compliance matters, corporate financings, pension plans and such other matters as were specifically referred to us.

4. In the course of his work for AMREP Mr. Friend developed an expertise in land sales regulation. I am informed that during the past several years he lectured on government regulation of land sales at Practicing Law Institute seminars on land acquisition and development, wrote a chapter for the accompanying course texts, and also lectured several times at two major universities.

5. AMREP first learned of the Grand Jury investi-

tecum were served upon AMREP and Rio Rancho Estates, Inc. addressed to the "Custodian of Records" of each corporation. In early April, 1974, Jacobs Persinger & Parker was retained by AMREP as counsel with respect to the investigation. Irving Parker and I were the partners and Joan Dacey was the senior associate working on the matter. From the outset, our principal contact at AMREP and the individual with whom we worked and consulted was Mr. Friend.

6. During the period March, 1974 to the end of January, 1975 when we first learned that Mr. Friend was a target of the Grand Jury investigation, he was intimately involved in the day-to-day strategy deliberations and decisions concerning AMREP's defense to the investigation. He was both an indispensable source of information about AMREP and its activities and a valued consultant whose many years of experience in the law made possible a constructive exchange of ideas in virtually every phase of the defense. He supervised and participated in the gathering of documents responsive to the subpoenas duces tecum addressed to AMREP and its subsidiaries; assisted in interviewing corporate employees subpoenaed to testify before the Grand Jury; participated in the preparation of various motions, including motions to quash the subpoenas and applications relating to the attorney-client and "work product" privileges; and contacted various former employees and consultants retained by AMREP or its subsidiaries who were subpoenaed to testify before the Grand Jury in order to have them debriefed following their appearance before that body.

7. More particularly, Mr. Friend's activities

(a) He was responsible for overseeing the gathering of documents responsive to various subpoenas *duces tecum* addressed to AMREP and its subsidiaries. Documents were reviewed first by Mr. Friend or an in-house attorney designated by him and thereafter by my firm to determine whether they were called for by the subpoenas and whether any of the documents might fall within the ambit of the attorney-client or "work product" privileges. Those documents which were not privileged were then produced and authenticated before the Grand Jury by the designated Custodian. Documents believed to be privileged were presented at various times to the Court for rulings.

(b) A number of employees of AMREP and its subsidiaries were subpoenaed to appear before the Grand Jury. Generally, the assistant United States attorney in charge of the investigation would inquire of us whether we would accept the subpoenas on behalf of the employee. The inquiry would be passed on to Mr. Friend, who would generally obtain such authority from the individual subpoenaed. On a number of occasions prior to the employee's testifying, he or she would be interviewed by Mr. Parker, frequently in company with Mr. Friend. Miss Dacey had the responsibility of debriefing witnesses and she normally gave Mr. Friend an oral report of the substance of the debriefing. Copies of written debriefing summaries were for-

(c) Motions to quash were made against two sweeping subpoenas *duces tecum* dated August 2, 1974, one addressed to AMREP and the other to Rio Rancho Estates, Inc. and a subpoena *duces tecum* dated October 3, 1974 addressed to J. K. Lasser & Co., AMREP's auditors. Mr. Friend was consulted in connection with the decision to make these motions. We drafted the papers which were then reviewed by Mr. Friend and revised in accordance with his comments. In September, 1974, when the Government made a motion to have AMREP held in civil contempt, Mr. Friend took part in the preparation of the affidavit in opposition to the Government's motion. Applications to Judge Pierce and Judge Weinfeld in 1974 and Judge Bonsal in January, 1975 were made concerning documents AMREP believed to be privileged. Mr. Friend was consulted with respect to each of these applications.

(d) During this period, Mr. Friend was in contact with various former employees and consultants retained by AMREP or its subsidiaries who were subpoenaed to testify before the Grand Jury. Mr. Friend and Mr. Arkin met with certain of these individuals before they testified. In addition, Mr. Friend arranged to have certain former employees and consultants who testified before the Grand Jury debriefed either by Miss Dacey, or one of his in-house attorneys, or, on at least one occasion, by Mr. Friend himself.

(e) During this entire period, in addition to innumerable conferences, Mr. Friend was in telephone communication with us at length on a virtually daily basis concerning defense strategy and the latest developments in the investigation. He met repeatedly with Mr. Parker, Mr. Arkin and me. He had his legal staff research certain matters and suggested certain matters for research by my firm or Mr. Arkin. He was the conduit between AMREP and outside counsel. Anything concerning the investigation that came to the attention of AMREP employees in New York or in New Mexico was funneled to Mr. Friend and conveyed by him to us and Mr. Arkin.

8. In late January, 1975, when it was learned for the first time that he was a target of the Grand Jury investigation, his involvement in the defense changed somewhat. On advice of his own defense counsel, he relinquished responsibility for complying with subpoenas duces tecum although, based upon conversations with him, I know that Mr. Friend saw copies of certain of the subpoenas and certain documents produced pursuant to them. Mr. Friend substantially ceased to meet with witnesses before they testified. However, as AMREP's General Counsel and because his knowledge and expertise made his participation essential to AMREP's defense, Mr. Friend continued to be in virtually

daily contact with Mr. Parker, Mr. Arkin or me concerning strategy and developments in the investigation.

Edward B Winslow
Edward B. Winslow

Sworn to before me this
[illegible] day of January, 1976.

Notary Public

STEVEN A. SANDERS
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible], 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x
UNITED STATES OF AMERICA, :
v. : 75 Cr. 1023
AMREP CORPORATION, et al., :
Defendants. :
- x

MEMORANDUM OF DEFENDANT SOLOMON H. FRIEND IN SUPPORT OF MOTION TO SEVER

Preliminary Statement

The misjoinder of defendant Solomon H. Friend in this action presents an extraordinarily compelling case for severance under Rules 8 and 14 of the Federal Rules of Criminal Procedure. Friend not only has been the General Counsel of defendant AMREP for the last five years; he was also an active member of the defense team in the grand jury investigation for over nine months before he was notified that he individually was also a target. His multiple roles as corporate counsel to defendant AMREP, defense counsel in the investigation, and now as himself a defendant, have created a hopeless and prejudicial conflict, which can only be resolved fairly by the severance of his case.

A joint trial would bring into direct conflict Friend's right to exculpate himself, through disclosures of confidential communications, and his clients' right to preserve the confidentiality of those same communications. The evidence in question goes to the heart of Friend's defense, and if he is prevented from using it, he will be deprived of a fair trial. Yet, disclosure of the material in question would result in substantial prejudice to his clients. Further, the disclosures of these confidential communications in a joint trial would result in the mounting of mutually antagonistic defenses, and would lead inevitably to government intrusion into the very councils of the defense.

The appropriate solution, we submit, is to sever the case of defendant Friend, whose position in this action is at most peripheral. Such a severance would avoid the unseemly and prejudicial spectacle of an attorney-defendant being forced to exculpate himself at the expense of his clients by divulging confidential communications, and would also avoid the serious constitutional questions which would flow from the compelled disclosure, by a former key member of the defense team, of confidential communications to which he became privy in the defense of this action.

Statement of Facts

The indictment herein alleges a "scheme and artifice to defraud" which is claimed to have been devised from "on or about January 1, 1961, and continuously thereafter . . ." (paragraph 13). Although the paragraph in question lists Solomon Friend as one of the defendants participating in the scheme from January 1961, the indictment elsewhere discloses on its face (paragraph 10) that Friend did not become an employee of defendant AMREP until 1970, nine years after the alleged scheme is supposed to have commenced. The disparity is significant because the indictment is devoted in large part to events which are alleged to have occurred before Friend was employed by the company. Thus the indictment alleges, among other things, that the "scheme and artifice" was carried out through such means as:

> The acquisition of certain land in New Mexico "in approximately July, 1961" (paragraph 18(a)):
>
> The organization of defendant Rio Rancho to subdivide and sell the land "in approximately August 1961" (paragraph 18(b));
>
> The organization of defendant ATC to sell lots at Rio Rancho Estates "in approximately August 1963" (paragraph 18(c));

> The offering for sale of such lots "beginning in late 1961 and in all material times herein" (paragraph 18, pages 6-7):
>
> Direct mail campaigns, advertisements, and sales visits "from 1961 through in or about 1964" (paragraph 18(g), page 7); and
>
> A variety of other "techniques and practices" which were allegedly carried out "from in or about 1965 up to and including the date of the filing of this indictment" (paragraph 18(g), pages 7-8).

Friend could not possibly have participated in any of these alleged acts prior to his employment in 1970.

Prior to Friend's employment as general counsel, AMREP's legal affairs were handled by outside law firms, including the present firm of Rogers & Wells, from 1962 to 1968, and thereafter the firm of Jacobs Persinger & Parker. Due to the increasing complexity of federal and state regulations, and the expansion of AMREP's business, it was determined to establish an in-house legal capacity, and Friend was hired in 1970 as general counsel, with instructions to build up a legal department. There followed a gradual transition of responsibility from outside to in-house counsel, although responsibility for at least some of the regulatory filings remained with outside counsel until late 1971. Edward B. Winslow, Esq., a partner first at Rogers & Wells and subsequently at Jacobs Persinger & Parker, continued to be intimately associated with AMREP's legal affairs, working closely with Mr. Friend and the AMREP Law Department on various matters to date.

In his employment at AMREP, apart from some miscellaneous assignments such as the construction department, which do not appear to be involved herein, Friend functioned primarily as an attorney. Together with outside counsel, and the in-house legal department which he built up, Friend carried out a wide range of legal functions, including advice to the defendant corporations and their officers on numerous matters, and working on various required submissions to governmental authorities in this closely regulated business.

Friend, directly and through his legal staff, caused numerous revisions to be made in AMREP's advertising and promotional materials and other practices. He has testified that, although in many instances these changes were not yet required by the appropriate regulatory authorities, he foresaw increasingly restrictive regulation of the industry, and sought to anticipate it. These changes in the advertising previously used by AMREP are disparaged in the indictment (paragraph xxvi, pages 16-17) as mere efforts to "shade" and "qualify" the advertising, without changing the real impact thereof. An examination of the actual changes, however, renders this characterization difficult to understand. Thus, Friend gave the following testimony before the grand jury when questioned by the prosecutor as to one such change (Transcript of September 11, 1975, morning session, page 28):

> "Q Continuing on page 11, there is a statement 'Yes, the land boom is on in Albuquerque and as demand for land increases, prices are starting to show it.'"
>
> * * *
>
> "A Yes, I struck out the entire sentence and substituted instead of that the following:
>
> " 'Yes, the demand for land in the Albuquerque area is on the rise', which I think is a substantial difference."
>
> * * *
>
> " In other words, this sentence as it originally was written was oriented to a speculative theme of potential profit, and I thought that the statement should be changed.
>
> " I never liked the word 'land boom', it was one of my hangups. I thought it was reminiscent of the gold rush days, so I took it out."

Further examples are set forth in the affidavit of William R. Glendon, submitted herewith, and Mr. Friend will testify as to his legal reasoning thereon and his discussions with his clients in regard thereto.

The grand jury investigation which led to the present indictment began in March, 1974. Each of the other individual defendants, except Oberman, was shortly thereafter called before the grand jury; all of them were warned that they were potential targets, and each promptly invoked their rights under the Fifth Amendment.

Friend, however, was not called before the grand jury, or given any indication that he was a target, for another nine months. During the intervening period, he functioned as a principal attorney for the defense, reviewing and coordinating the activities of outside counsel for AMREP, and for the individual targets. Submitted with this motion is an affidavit by Stanley Arkin, Esq., who had been retained as counsel for certain of the individual targets. As set forth in Mr. Arkins' affidavit, and in a separate affidavit of Edward B. Winslow submitted in support of AMREP's motion to sever, Friend generally supervised and coordinated the defense activities. He conferred with other defense counsel as to strategy and tactics on virtually a daily basis. He interviewed actual and potential witnesses, received reports on their debriefings after their grand jury testimony, and sometimes participated in the debriefing. He participated in the decisional process on various defense motions, and worked on their preparation. In summary, he was deeply involved in the defense of the action, and was thoroughly familiar with the opinions, legal theories, plans and work product of other defense counsel.

On January 28, 1975, Mr. Friend was called before the grand jury in connection with its abortive investigation of a claimed obstruction of justice resulting from the non-production of a particular document. He was warned that he might be a target of this obstruction investigation, but nothing whatsoever was said to him concerning his status as a target in the principal investigation by the same grand jury. However, almost immediately after he completed his grand jury testimony at this first session, the prosecutor advised Mr. Arkin that Friend was in fact a target of the principal investigation. In fact, comments by the prosecutor in the course of Friend's subsequent appearances before the grand jury indicate strongly that he was a target prior to that time.* After he was advised of his status as a target, Friend curtailed some aspects of his participation in the defense of the investigation, and retained personal counsel to represent him.

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* The following exchange took place during Friend's grand jury appearance on September 4, 1975 (Transcript, page 25):

"A When I became a target, Ms. Hynes, in January --

"Q Mr. Friend, please don't characterize when you became a target. I don't believe you are privy to that information.

"A When I learned that I was a target, which was in January -- I did not know it before --"

Thereafter, Friend waived his privilege under the Fifth Amendment, and testified freely before the grand jury on ten separate occasions. The thrust of his testimony was that he acted properly as an attorney, advised his clients in good faith, and made every effort to see that they complied in all respects with the law.

Although he testified freely in every other respect, Friend was repeatedly confronted with the problem, in relating his activities to the grand jury, of the attorney-client privilege (see, e.g., Transcript of July 29, 1975, morning session, page 6). At one point, he was specifically requested by the grand jury to produce privileged memoranda which he believed tended to exculpate him. When the corporation declined to waive the privilege, counsel for Friend sought and obtained an order permitting the production of the documents in question to the grand jury. A copy of Judge Duffy's opinion, authorizing the production for the grand jury, but noting the continuing objection of the corporation, is annexed to the Glendon affidavit as Exhibit A.

Subsequent to the indictment, counsel for Friend have advised counsel for the other defendants that Friend will seek to offer far more extensive evidence of privileged communcations at trial, in order to exculpate himself. Thus, counsel for the other defendants have been advised that:

1. Friend will be asked to testify as to numerous instances in which he advised the other defendants to make changes in advertising or other practices of AMREP. This will, clearly, involve extensive and detailed disclosure of confidential communications. If it is proven that such conduct continued, it seems clear that disclosure of the confidences in question will be prejudicial to the other defendants, but it seems equally clear that counsel for Friend would have no choice but to introduce the evidence in question.

2. In various instances, where advice which he gave may be shown to have been ignored, Friend will testify that he did not know of the alleged failure to follow it. It can be anticipated that Friend will be asked on cross examination if and when he learned of this. In order to answer that question, he would be required in numerous instances to directly invade the councils of the defense, by indicating that he first learned of such matters from consultations with other attorneys in the defense of this investigation.

3. Friend will further testify that he did not know of numerous matters which the indictment alleges to be part of the "scheme". Again, when he is asked on cross examination when he did learn of these alleged facts, a responsive answer will frequently cut directly into the councils of the defense. For example, one of the facets of the alleged "scheme" (indictment, paragraph 18(o)), is stated to be the non-disclosure that utilities were not provided for so-called "commercial" and "multiple dwelling" lots. On this subject, Friend's testimony in response to the prosecutor's questions, was as follows: (Transcript, October 21, 1975, page 60):

> "Q What was the provision for providing utilities for people that bought commercial and multiple dwelling lots?
>
> "A From what I learned recently, none.
>
> "Q How did you learn that?
>
> "A When you subpoenaed --
>
> "Q Who did you learn it from"
>
> "A I learned it from Ted Schreier [an attorney in AMREP's Law Department]."

Many more instances of this kind will inevitably occur in Friend's trial testimony.

4. Friend testified at some length before the grand jury as to corrections and improvements which he made in AMREP's advertising and other practices (see, e.g., Transcript of September 11, 1975, morning session,

pp. 15-50). At trial, it is intended to have Friend develop this in far greater detail, and specifically to show that he was the moving force behind the improvements which were made. This will involve extensive testimony as to confidential conversations between Friend and his clients. It is believed that this testimony will strongly establish Friend's good faith in carrying out his legal duties; at the same time it seems inevitable that the other defendants would be prejudiced by the detailed account of his efforts "to get this company to do something right" (Transcript July 31, 1975, morning session, page 97).

5. Similarly, Friend will of course stress the sharp contrast in many respects, between practices at AMREP before and after he caused various procedures to be revised. At trial, there will be many instances where Friend will be obliged to expand upon such matters as his grand jury testimony relating to customer complaints (July 29, 1975, afternoon session, page 10):

> "Complaints were, so to speak, coming out of the woodwork. But, they were complaints that had been -- that were arising from sales that were made prior to the time that I joined the company."

That such testimony will tend to prejudice the other defendants seems inescapable, but again there appears to be no way that counsel for Friend could take any other responsible course.

6. As noted above, Friend had no responsibility for, or authority over, the making of sales policy. To emphasize this fact in his testimony will almost certainly seem to reflect unfavorably on other defendants. Yet, once again, it is a crucial fact that counsel for Friend cannot neglect to bring out, and to do so through all competent evidence, include confidential communications between Friend and his clients.

As appears from the foregoing, the core of Friend's defense has been, and will be at trial, that he was acting in good faith throughout. As noted above, the other individual defendants have all invoked their privilege under the Fifth Amendment; counsel for Friend, on the other hand, will emphasize, as strongly as possible, and by every proper means, the inferences to be drawn from such matters as Friend's full cooperation with the grand jury.

ARGUMENT

I. A JOINT TRIAL WOULD BE UNFAIR AND PREJUDICIAL TO FRIEND, AS WELL AS THE OTHER DEFENDANTS, BECAUSE OF HIS PREVIOUS ROLE AS CORPORATE COUNSEL AND DEFENSE ATTORNEY.

Defendant Friend has occupied a triple role in this proceeding, as an attorney for the corporate defendants, as a key member of the defense team, and now as a co-defendant. Whether by design or not, the government has thus placed one of the key defense attorneys in a position where he will be forced to defend himself by disclosing the confidences of his clients. Further, in order to establish his lack of prior knowledge as to some of the practices being attacked by the government, Friend will be drawn into disclosing that he first learned of them in his role as defense counsel during the investigation which led to this indictment. These results, whether intended by the government or not, directly and seriously invade the Fifth and Sixth Amendment rights of Friend and the other defendants. The conflict thus created can only be avoided, and should be avoided, by directing a severance.

Friend, As Well As The Other Defendants, Would Be Prejudiced By The Necessity To Disclose Privileged Communications In A Joint Trial

To require a joint trial herein, under circumstances which would necessarily involve a broad invasion of the attorney-client and work product privileges, would be prejudicial not only to the defendants, but also to the broad policy behind that privilege, and to the orderly administration of justice. As was said by Justice Jackson, concurring in the decision in *Hickman v. Taylor*, 329 U.S. 495, in rejecting an application to compel the product of attorneys' work product even in a civil case (at pages 514-5):

> "The primary effect of the practices advocated here would be on the legal profession itself. But it too often is overlooked that the lawyer and the law office are indispensable parts of our administration of justice. Law-abiding people can go nowhere else to learn the ever changing and constantly multiplying rules by which they must behave and to obtain redress for their wrongs. The welfare and tone of the legal profession is therefore of prime consequence to society, which would feel the consequences of such a practice as petitioner urges secondarily but certainly."

Yet, a joint trial in this action would compel Friend to disclose such privileged communications. It is well settled that good faith is an absolute defense to a mail fraud prosecution. *See*, *e.g.*, *United States* v. *Simon*, 425 F.2d 796, 805 (2d Cir. 1969), *cert*. *denied* 397 U.S. 1006; *United States* v. *Diamond*, 430 F.2d 688, 692 (5th Cir. 1970); *United States* v. *Sheiner*, 273 F.Supp. 977, 982-3 (S.D.N.Y. 1967), *affirmed* 410 F.2d 337 (2d Cir. 1969), *cert*. *denied* 396 U.S. 825. In the present case, Friend would be obliged to establish his own good faith by testifying as to the advice which he gave his clients on a number of matters raised in the indictment, and as to the clients' responses thereto. Such a disclosure would be injurious to the serious public policy of encouraging clients to be candid with their attorneys.

Further, such disclosure in a joint trial would prejudice Friend, as well as his clients. It is believed that the substance of the communications in question would strongly tend to establish Friend's good faith. Nevertheless, the unedifying spectacle of an attorney exculpating himself to the possible detriment of his clients, by disclosing communications which they made to him in confidence, would obviously do Friend no good with a jury, even if logically the effect of the disclosures is to exculpate him. In this way, evidence which properly tends to establish Friend's innocence could be deprived of its effect, or even turned against him in the net result. We submit that this result would be clearly unjust.

Friend Should Not Be Obliged, In A Joint Trial, to Invade The Councils of the Defense

As set forth in the affidavits submitted herewith, Friend will testify that he had no knowledge of many of the practices attacked by the government in this indictment.* For example, he will testify that he had no knowledge of any sale of "commercial" lots without provisions for utilities (indictment paragraph 18(o))ii)), and of the sale of "commercial" lots and ranchettes without exchange privileges (Paragraphs 18(o) (xvii), (xviii)). In some instances, Friend gave such testimony before the grand jury; he was then questioned as to when he acquired such knowledge, if he did, and his answers led directly to the conversations with other counsel in preparing the defense herein (see, e.g., Transcript of September 9, 1975, morning session, page 13). It is anticipated that similar situations will be presented repeatedly at trial, and that if he establishes his lack of previous knowledge -- which could obviously be crucial in a mail fraud prosecution -- he will be repeatedly obliged on cross examination to delve into the councils of the defense.

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* No agreement should be inferred with the government's position that these practices were unlawful or improper, or in fact existed.

No sanction should be given to practices which undermine an attorney's effective assistance to his clients. As the Supreme Court held in Hickman v. Taylor, supra, (329 U.S at 510-511):

> "Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a

> client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests."

It is for these reasons, as Justice Jackson stated, concurring in the same case, that an attorney who testifies "steps out of professional character to do it. He regrets it; the profession discourages it." And the situation is far graver where an attorney is required to testify "not as to what he has seen or done but as to other witnesses' stories, and not because he wants to do so but in self-defense" (329 U.S. at 517).

Consistent with this policy, it has repeatedly been held that intrusion into the councils of the defense by the government, through eavesdropping or otherwise, deprives the defendant of due process and the effective assistance of counsel. Coplon v. United States, 191 F.2d 749 (D.C. Cir. 1951), cert. denied 342 U.S. 926; United States v. Adreadis, 234 F.Supp. 341, 345 (E.D.N.Y. 1964). And such intrusion by the government violates both the Fifth and Sixth Amendments, Caldwell v. United States, 205 F.2d 879 (D.C. Cir. 1953), cert. denied 349 U.S. 930.

The grave constitutional policy here involved is not limited to surreptitious intrusions. In Re Terkeltaub, 256 F.Supp.

683 (S.D.N.Y. 1966). In Terkeltaub, the government sought to compel a defense attorney to testify to alleged conversations among the attorney, his client and a potential witness, in order to determine whether improper efforts had been made to tamper with the witness. In denying the government's application to compel the attorney's testimony, Judge Frankel noted (page 685):

> "And so we start here with a demand that is troublesome on its face -- a demand that a lawyer be forced to testify about his work in supposed defense of a client."

The Court further noted (ibid.):

> "It makes no difference whether the conversations unlawfully audited are solely between counsel and client and thus within the traditional, non-constitutional privilege. The defendant has a right to prepare in secret, seeing and inviting those he deems loyal or those with whom he is willing to risk consultation. The prosecution's secret intrusion offends both the Fifth and Sixth Amendments. Caldwell v. United States, 92 U.S. App. D.C. 355, 205 F.2d 879 (1953), cert. denied 349 U.S. 930, 75 S.Ct. 773 (1955).

The court rejected the government's contention that the holdings of such cases as Coplan and Caldwell applied only to secret intrusions, rather than open applications to compel testimony, holding (page 685):

> "The ultimate interest to be protected is the privacy and confidentiality of the lawyer's work in preparing the case. It is the violation of that interest that is held offensive to the Constitution in the cases of eavesdropping and spying. The protection would be a thin illusion if the Government could have for the asking what it has, in rare lapses, sought by less genteel means."

The principles stated in Terkeltaub are fully applicable in the present case, whether the testimony in question were offered by the prosecution or the defense. In United States v. Mitchell, 372 F.Supp. 1239 (S.D.N.Y. 1973), counsel for one of the defendants had been questioned by an assistant United States attorney, and had been induced -- apparently in an effort to exculpate himself -- to allow his work product file to be inspected by the government. Subsequently, the defense attorney testified before the grand jury. In granting a motion to suppress both the documents which he produced and his testimony, Judge Gagliardi rejected the government's contention that no violation had occurred because the attorney, Parkinson, had produced the documents and testified voluntarily (pages 1245-6):

> "We find the Government's efforts to distinguish Terkeltaub on the basis of compelled versus voluntary testimony unpersuasive. It is clear that an attorney is 'not only entitled, but probably required, to withhold' such testimony. Id. at 684. The decision to 'volunteer' information of this nature rests with the client. Parkinson's erroneous conclusion that the information could not be withheld

> can in no way be imputed to Mr. Stans
> nor can the 'fruits' of that conclusion
> be used to the detriment of the defendant."

Judge Gagliardi, while refusing to dismiss the indictment, held that the government's conduct "constituted an unjustifiable intrusion into matters protected by the work product rule" (page 1245), and "constituted a violation of the defendants Fifth and Sixth Amendment rights" (page 1246).

Counsel for other defendants herein presumably will object to the offer of any testimony by Friend which invades the councils of the defense, urging that this will violate the Fifth and Sixth Amendment rights of their clients. On the other hand, counsel for Friend have no choice but to offer the evidence in question, since it is vital to Friend's defense. It would be manifestly unjust to go forward with a joint trial where the result would be to preclude Friend from offering this essential evidence. See, e.g., United States v. Echeles, 352 F.2d 892, 897 (7th Cir. 1965); United States v. Shuford, 454 F.2d 772, 777 (4th Cir. 1971); Byrd v. Wainwright, 428 F.2d 1017 (5th Cir. 1970).

The resulting conflict clearly would be hopelessly prejudicial to the attorney-defendant, to his clients, or to both. In a very real sense, this dilemma was created by the government itself -- whether advertently or not, makes no practical difference -- in waiting nine months before advising

Friend that he personally was a target, although the government was aware that he was active in the councils of the defense. It should not be possible so easily to nullify the confidentiality surrounding attorney-client communications and the work of defense counsel.

The prejudice should at least be minimized by severing Friend's case, for a separate and subsequent trial. Only at such a subsequent trial would Friend be able to introduce essential exculpatory evidence, without infringing upon the right of the other defendants to effective assistance of counsel.

Other Souces of Exculpatory Evidence

Furthermore, there are other sources of evidence, equally vital to Friend's defense, which might not be available to him in a joint trial. For example, as set forth in the Glendon affidavit, the attorneys who worked under Friend in the Law Department of AMREP may be called to testify. Friend has already testified before the grand jury as to some private conversations with in-house attorneys at AMREP, as illustrating his continuing insistence on strict compliance with all aspects of the law. Thus, with respect to the placement of one of the contract disclosures, that AMREP did not repurchase land from customers, Friend gave the following testimony (Transcript of July 29, 1975, afternoon session, page 31):

> "I wrote a memorandum to Arthur Mantel [one of AMREP's house counsel] at the same time or the month of the time that we worked on the film, and I said to Arthur that I wanted that language about no resale put on the face of the contract.
>
> "Q What was the language you wanted on the face of the contract?
>
> "A I will tell you. He wrote back to me, and he said he would like to put in on the back of the contract, and he would only like to refer to the words that the company does not repurchase land.
>
> "And, I had a conversation with Arthur, and I said, 'Arthur, look, I am the boss of this legal department, not you. I want the language on the front of the contract, and I want the reference to no resale put on the front of the contract so that it is clear and conspicuous, and do it.'"

Numerous similar instances would be covered in Friend's testimony, and counsel for Friend have been informed that several of AMREP's present and former house counsel have made statements corroborating Mr. Friend's testimony on these and similar issues. At trial, Friend may well seek to call these attorneys as witnesses, and this would unavoidably involve questioning on areas of privilege, work product or both. Further, certain of these attorneys were closely involved with Friend in the councils of the defense, during the nine months of the investigation before he was notified that he was a target. Counsel for other defendants presumably will object to Friend's introduction of such testimony by AMREP's in-house attorneys.

In the event of a joint trial, counsel for Friend will argue that he should be permitted to introduce the testimony of the other attorneys, under the provisions of the Code of Professional Responsibility, Disciplinary Rule 4-101(C)(4), which permits an attorney to disclose confidences when necessary "to defend himself or his employees or associates against an accusation of wrongful conduct" (emphasis supplied), *i.e.*, that Friend's subordinates should be considered "associates". However, no authority has been discovered on either side of this issue, and at a joint trial the court would be faced with a difficult question of first impression.

A similar problem is presented with respect to outside counsel for AMREP. As set forth in the moving affidavit, several outside attorneys for the company have indicated a willingness to testify for Mr. Friend, if they are permitted to do so. Their testimony would raise issues of privilege and councils of the defense, similar to those discussed above, with perhaps more complex issues as to whether the outside attorneys can be considered "associates" of Mr. Friend.

Clearly, any ruling on these novel and difficult questions will be prejudicial to Friend or to the other defendants. Introduction of such testimony, under the authorities set forth above, would raise grave questions under the Fifth and Sixth Amendments. Yet, to exclude such evidence would preclude Friend from defending himself effectively, and it would then be he who would be deprived of a fair trial. In the event of a severance, on the other hand, particularly if Friend were tried subsequently, the other defendants would no longer appear to have any basis for objecting to his use of such evidence in his own defense.

In a joint trial, moreover, the testimony of the other attorneys might not be available to Friend even if the privilege question is resolved in his favor. The language of the Disciplinary Rule is permissive, stating that an attorney "may" disclose confidential communications under the circumstances enumerated. Since some of the attorneys involved still work for AMREP, there is at a minimum serious doubt whether they would choose to invade the privilege at a joint trial, over AMREP's objection. Again, at a separate and subsequent trial, the probability is that the other defendants would have no further reason to oppose such testimony by the AMREP attorneys.

The other natural source of corroboration, for Friend's testimony as to the advice which he gave his clients, would be the clients themselves. If permitted to do so, Friend will call the principals of the corporation to confirm his testimony as to the legal advice which he offered. As noted above, however, all of the individual defendants other than Friend, have invoked their privilege under the Fifth Amendment and all or some presumably will continue to do so. Under these circumstances, Friend could not call the other defendants as witnesses in a joint trial, and could not even comment on their failure to testify. See, e.g., United States v. Echeles, 352 F.2d 892, 897 (7th Cir. 1965); DeLuna v. United States, 308 F.2d 140 (5th Cir. 1962), United States v. Housing Foundation of America, 176 F.2d 665 (3rd Cir. 1949); United States v. Benjamin, 120 F.2d 521, 522 (2d Cir. 1941).

A similar problem was before the Court of Appeals in United States v. Echeles, supra. That case involved a prosecution for suborning perjury and obstruction of justice; it was there alleged that defendant Echeles, an attorney, had instructed one of the other defendants to commit perjury in an earlier criminal action. It was shown that, on an earlier occasion, the defendant who had given the perjurious testimony stated that the attorney did not instruct him to do so. In reversing the denial of the attorney's severance motion, the Seventh Circuit held (352 F.2d 897-8):

> "For it appeared that, in a trial with Arrington as a co-defendant, Arrington having made statements in open court exculpatory of Echeles, Echeles would be unable to call this co-defendant to the stand for the purpose of getting the same or similar statements holding Echeles blameless into evidence."

* * *

> "At this juncture, we hold merely that, having knowledge of Arrington's record testimony protesting Echeles' innocence, and considering the obvious importance of such testimony to Echeles, it was error to deny the motion for a separate trial. It should have been clear at the outset that a fair trial for Echeles necessitated providing him the opportunity of getting the Arrington evidence before the jury, regardless of how we might regard the credibility of that witness or the weight of his testimony."

In United States v. Shuford, supra, the defendant Shuford, an attorney, was indicted for allegedly submitting false reimbursement claims in connection with treatment at a clinic to which the attorney referred his clients. The manager of the clinic, Long, was named as a co-defendant. Shuford desired to call Long as a witness, to corroborate Shuford's testimony that he had advised Long to submit the reimbursement claims properly. Shuford's motion for severance was denied, and in the resulting joint trial, Long refused to take the stand. In holding that the denial of severance was reversible error, the Court of Appeals stated (454 F.2d at 777):

> "Thus the situation presented to the jury was that if they credited Long, then they could find that Shuford intended to falsify the therapy bill submitted to the Government. On the other hand, if they believed Shuford, they could see him as the innocent victim of Long's failure to follow instructions. Plainly, the guilt or innocence of Shuford hinged, in large measure, on the outcome of this credibility dispute.

* * *

> "In a situation where the elusive quality of credibility is of such importance, the jury should have the benefit of all relevant testimony likely to shed light on the situation. We think that the denial of the severance, resulting in withholding this witness' testimony on such a critical point, so tipped the scales against Shuford that he failed to receive a fair trial. A verdict based so heavily on less than the full available testimony, where the missing testimony could, with relative ease, have been procured, should not stand."

If a severance is granted herein, this corroborating testimony would probably be available to Friend at any subsequent trial. A similar question came before this Court (Judge Frankel) in United States v. Gleason, 259 F.Supp. 282 (S.D.N.Y. 1966). There the taxpayer, Karp, was indicted for income tax evasion along with her tax accountant, Pitkin. Karp asserted that she had been ignorant of numerous matters charged in the indictment, and had relied on her accountant Pitkin. Pitkin had invoked the privilege and refused to testify before the grand jury. When Karp moved to sever under Rule 14, citing the need to call Pitkin as a defense witness, the government argued that Pitkin's testimony might still be unavailable to Karp in a separate trial because Pitkin would invoke the Fifth Amendment. In granting the motion for severance, Judge Frankel held (259 F.Supp. at page 284):

> "It may be questioned, first of all, whether the prediction about another defendant's disposition to testify -- even where the prediction rests upon the advice of that defendant's counsel, who may not have unqualified reasons for sharing confidences with the prosecution-- is 'properly the Government's to interpose.' United States v. Echeles, 352 F.2d 892, 898 (7th Cir. 1965). Passing this, as the argument of the motion demonstrated, the matter is surely in the realm of speculation. If Pitkin is tried separately and first, he may plead, or be found, guilty. He may choose to testify in his own defense. He may, as the law presumes, be acquitted, whether or not he takes the stand. One way or another, it is possible that he will come to lack a subsequent basis for invoking the privilege. Cf. Namet v. United States, 373 U.S. 179, 188-189, 83 S.Ct. 1151, 10 L.Ed.2d 278 (1963)." [Emphasis supplied]

The same considerations are applicable here. If Friend is tried subsequently, the other defendants may well no longer have the Fifth Amendment privilege, either because their cases have been disposed of or otherwise. The fact that this cannot be known with certainty at the present time does not warrant denial of the severance motion. As was noted by the Court of Appeals in Byrd v. Wainwright, 428 F.2d 1017, 1022 (5th Cir. 1970), citing the decision of this Court in Gleason:

> "In this circuit we have referred to the codefendant's being 'more likely to testify were he [the movant] tried separately.' Smith v. United States, supra, 385 F.2d at 38. In United Stated v. Gleason, 259 F.Supp. 282, 284 (S.D.N.Y. 1966) the court reached this conclusion:

> It is enough to say that Karp [the movant] has shown persuasive ground for the claim that she needs Pitkin's [the codefendant's] evidence; that the need must almost certainly go unsatisfied in a joint trial; and that there is substantially greater likelihood of her using him if they are tried separately."

The prejudice to Friend in this respect, from a joint trial, goes beyond the unavailability of the defendants' testimony. As noted, Friend will testify on his own behalf that he acted and advised his clients properly: on this issue credibility can clearly be all important. Yet his testimony would not have been corroborated by the persons best able to do so, and at a joint trial Friend will not even be able to explain why it was not corroborated. His inability to comment on the silence of his co-defendants may preclude him even from calling attention to the fact that his testimony in this respect is uncontradicted by his clients. This, in itself, would be sufficient to deprive Friend of a fair trial. As was held in DeLuna v. United States, 308 F.2d 140, 141 (5th Cir. 1962):

> "* * * If an attorney's duty to his client should require him to draw the jury's attention to the possible inference of guilt from a co-defendant's silence, the trial judge's duty is to order that the defendants be tried separately."

Accord, United States v. Echeles, supra, at 352 F.2d 898.

Justice clearly requires that counsel for a defendant in a criminal case

> "should be free to draw all rational inferences from the failure of a co-defendant to testify, just as an attorney is free to comment on the effect of any interested party's failure to produce material evidence in his possession or to call witnesses who have knowledge of pertinent facts."

DeLuna v. United States, supra, at 308, F.2d 143: Accord, United States v. Gleason, supra, at 259 F.Supp. 282.

The circumstances of the present case make a fair trial for Friend impossible if he is tried jointly with the other defendants. Only by severance, and a subsequent trial if necessary, can the fundamental unfairness to Friend be avoided.

II. IN A JOINT TRIAL, DEFENDANT FRIEND WOULD BE PREJUDICED BY THE ACCUMULATION OF EVIDENCE RELATING ONLY TO OTHER DEFENDANTS

As set forth above, Friend was not employed by AMREP until almost a decade after the alleged "scheme" is supposed to have commenced. The initial acquisition of land, the founding of the defendant corporations, the initial sales campaigns, the distribution of many items of sales and promotional literature, and numerous other events alleged in the indictment had long since been completed before Friend began his duties as general counsel of AMREP. In any joint trial, it could well be weeks or months before Friend's name would even be mentioned from the witness stand.

It is well settled that a separate trial should be ordered where substantial prejudice to one defendant will otherwise result from the introduction of evidence relevant only to co-defendants. See, e.g., Bruton v. United States, 391 U.S. 123 (1968); Kelly v. United States, 349 F.2d 720 (2d Cir. 1965), cert. denied 384 U.S. 947; United States v. Gentile, 495 F.2d 626 (5th Cir. 1974). Severance should be directed whenever the moving defendant demonstrates "that the evidence against his co-defendants is far more damaging than the evidence against him." See McHale v. United States, 398 F.2d 757, 758 (D.C. Cir. 1968), cert. denied 393 U.S. 985. In the present case, the accumulation of evidence relating to other defendants, for time periods preceding Friend's connection with AMREP, would as a practical matter make a fair trial for him virtually impossible.

Clearly Friend could not be held liable for any of the alleged acts completed prior to his employment by AMREP. See, e.g., Levine v. United States, 383 U.S. 265 (1966); Glazerman v. United States, 421 F.2d 547, 551 (10th Cir. 1970) cert.denied 398 U.S. 928. The sheer bulk of the evidence relating only to other defendants would in itself be prejudicial to Friend in a joint trial. See Kelly v. United States, supra, at 349 F.2d 756. Moreover, the gap between the evidence pertaining to Friend, and that relating to the other defendants, is not merely quantitative.

As set forth in the Glendon affidavit (pages 17-20), Friend made or sought to make numerous changes in the advertising materials and practices of AMREP after he became general counsel, invariably in the direction of making them more conservative. Indeed, the government recognizes this in the indictment, although it seeks to minimize the changes made by Friend as mere efforts to "shade and qualify" the advertising language (paragraph xxvi, pages 16-17). In reality, as appears from the examples set forth above and in the moving affidavit, the changes made by Friend frequently involved the deletion of entire sections, and the complete rewriting of others. However, the materials before and after the revision were unquestionably quite different, and would make a distinctly different impact at trial.

With respect to the disparity in evidence as to Friend and the other defendants, the situation presented is analogous to that involved in United States v. Kelly, supra, where the Second Circuit held (349 F.2d at 759):

> "The principal and inevitable prejudice, however, was caused by the slow but inexorable accumulation of evidence of fraudulent practices by Shuck's co-defendants Kelly and Hagen. The ingenious schemes and designs they formulated to cover their tracks as well as the shameless way in which they manipulated the market, thumbed their noses at the SEC and feathered their nests at the public expense, concealing their ill-gained payoffs by means of organizations formed under the secrecy laws of Liechtenstein and Switzerland, must have stamped them in the eyes of the jurors as unscrupulous swindlers of the first rank. That some of this rubbed off on Shuck we cannot doubt."

A joint trial would also prejudice Friend with respect to questions involving the admissibility of evidence. It can be anticipated that, at trial, the government would seek to introduce various alleged acts and statements of other defendants herein as against Friend, on the theory that they were acts or words of "co-schemers". It is well settled, however, that before Friend could be characterized as a "co-schemer", the government would be obliged to prove that Friend personally had an actual intent to defraud. See, e.g., United States v. Klein, 515 F.2d 751 (3rd Cir. 1975); United States v. Markee, 425 F.2d 1043 (9th Cir. 1970), cert. denied, 400 U.S. 847. Mere allegations of association or "involvement" with persons who were involved in such a scheme would be insufficient to prove this, as a matter of law. See, e.g., United States v. Peipgrass, 425 F.2d 194 (9th Cir. 1970); United States v. Koenig, 388 F.Supp. 670 (S.D.N.Y. 1974). And it is clear that the required fraudulent intent of an individual defendant must be proved personally as to him, and cannot be inferred from the acts or statements of his alleged co-schemers. "The specific intent of one defendant in a case such as this [a prosecution for conspiracy] is not ascertained by reference to the conduct or statements of another, even though he had knowledge thereof." United States v. Spock, 416 F.2d 165, 173 (1st Cir. 1969). This rule was specifically applied to an indictment charging mail fraud and conspiracy in Phillips v. United States, 356 F.2d 297, 303 (9th Cir. 1965), cert. denied sub nom. Walker v. United States, 384 U.S. 952 in which the Court held:

> "Such an element [specific and actual intent to defraud] may be established circumstantially. Thus, a conspirator's intent to defraud may be inferred from the fact that he personally knew that the venture was operating deceitfully. But since it is the personal knowledge of the invidious fact which warrant such an inference, nothing less than personal knowledge of that fact will do to establish the fact even circumstantially." [Emphasis supplied].

See, also, Windsor v. U.S., 384 F.2d 535 (9th Cir. 1967.)

Thus, in a separate trial of Friend, the government would be obliged to introduce specific evidence of fraudulent intent on his part, before the words or acts of the alleged co-schemers would be admissible--a burden which, it is believed, the government could not discharge as to Friend. In a joint trial, however, there may be weeks of testimony as to alleged acts or statements of the co-defendants before Friend is even mentioned from the witness stand. If this mass of evidence relating to others were received, "subject to connection" as to Friend, the issue of intent as to Friend might well be resolved in precisely the way the cases hold to be impermissible--that is, by mere association, since as a practical matter it would be impossible for the jury to disentangle the accumulated evidence as to the co-defendants.

Moreover, this is not a case in which it would realistically be possible for the jury to separate the evidence as to Friend and the other defendants, or for the Court to cure the resulting prejudice by instructions. The 80 count indictment herein charges an alleged "scheme" extending for almost fifteen years, in which the government has estimated that it will take approximately six weeks to present its direct case--an estimate which is probably conservative. Only by severance can Friend be assured of a minimally fair trial. See, e.g. United States v. Leighton, 265 F. Supp. 27, 33 (S.D.N.Y. 1967), affirmed 386 F.2d 822 (2d Cir. 1967), cert. denied 390 U.S. 1025; United States v. Sanders, 266 F. Supp. 615, 621 (W.D. La. 1967), affirmed 415 F.2d 621 (5th Cir. 1969), cert. denied 397 U.S. 918. Cf. United States v. Branker, 395 F.2d 881, 888 (2d Cir. 1968), cert. denied sub nom. Lacey v. United States, 393 U.S. 1029.

When such a strong likelihood of prejudice by association is coupled with a threatened denial of exculpatory evidence, severance is clearly warranted. A similar conclusion was reached, in a substantially less complex case under the mail fraud statute, involving a less voluminous indictment, in United States v. Sanders, supra, where the court held (at 266 F. Supp. 621):

> "We direct this severance for the reason that it is apparent in this case, from the facts stated in the indictment and the brief filed by the government, that it will be extremely difficult, if not impossible, to separate the proofs as to each count of this fifty-page document, which is entirely too prolix and redundant in the first place, as to each defendant, with resulting prejudice.
>
> "Federal Rules of Criminal Procedure, Rule 14 makes severance a matter of discretion.
>
> "Moreover, under the doctrine of DeLuna v. United States, 308 F.2d 140, 1 A.L.R.3d 969 (5 Cir. 1962), reh. den. 324 F.2d 375 (1963), they have a right to call their co-defendants to the witness stand and, as recognized in Hayes v. United States, 329 F.2d 209 (8 Cir. 1964), if he should claim sanctuary in the Fifth Amendment:
>
>> 'Permitting comment upon the failure of a defendant to testify constitutes prejudicial error as to the non-testifying defendant. On the other hand, where defendant is tried separately his counsel has the right to make fair comment upon the fact that his testimony has not been denied or contradicted. The jury is entitled to consider lack of evidence as well as evidence in reaching its conclusion.'"
>> (Emphasis added by the Court in Sanders)

All of the foregoing difficulties would be presented in a joint trial of this action, together with the additional range of problems presented as to attorney-client privilege and councils of the defense. Under these circumstances, severance is clearly called for under Rule 14.

III. CONSIDERATIONS OF JUDICIAL ECONOMY DO NOT WARRANT A JOINT TRIAL HEREIN.

If a severance is granted herein, the Court would not necessarily be faced with a second, lengthy trial. Even if there were a second trial of this peripheral defendant, Friend might be well advised to consider waiving a jury, in which event the case could be tried in large part on stipulated evidence from the preceding trial.

Further, the conflicts and difficulties, which would be built into a joint trial of Friend and the other defendants, would more than offset any apparent economy in such a trial. As discussed above, such a joint trial would be burdened at virtually every step of the defense case with difficult issues as to the attorney-client privilege, work product, councils of the defense, and related issues. The antagonistic position in which Friend and the other defendants could thereby be placed, with such results as the necessity for frequent inquiries on voir dire could only serve to lengthen rather than to expedite the proceedings.

In United States v. Gambrill, 449 F.2d 1148 (D.C. Cir. 1971), far smaller difficulties in this respect persuaded the Court of Appeals that severance rather than joint trial would promote economy as well as justice. The difficulty in Gambrill related only to certain alibi testimony which one co-defendant sought to offer over the objection of another: neither in volume nor in complexity did it approach the problems which would be presented in a joint trial herein. Nevertheless, the Court in Gambrill, after also reviewing the disparity in evidence between the two defendants, held (449 F.2d at 1163):

> "We do not intimate that the evidence against Gambrill is insufficient to support a conviction should the jury return one, nor are we of the view that the disparate quanta of evidence now present in the case would necessarily justify a severance in all cases. We do conclude, however, that the difference in the amount of evidence against each defendant, when considered in light of the other elements present in the case, is a factor which supports our conclusion that, because of that fact and others, severance should be granted on remand.
>
> "Secondly, the principal reason for the rule permitting the joinder of offenses is economy of time and efficiency in the judicial process. Relevant to our decision, then, is the consideration that if the demonstrated antagonism continues between these two defendants insofar as their alibi is concerned, it is quite likely to contribute to difficulties at trial and on appeal that would be counter productive to the normal reasons for trying the cases jointly. Once more, this is not a factor which, by itself, would necessarily justify a severance, but it, too, is a factor which, in the present context, supports the conclusion we here reach."
>
> (Footnotes omitted)

These considerations apply in the present case with far greater force than in Gambrill. As noted above, Friend's multiple position as corporate counsel, defense counsel in the investigation, and co-defendant would raise numerous issues which are both difficult and novel. As to each of these issues, whichever way it is resolved, there would be clear prejudice to the defendant or defendants against whom the ruling was made. Indeed, it is scarcely an exaggeration to say that a joint trial on these facts would have built-in reversible error. Even if the objective of economy could override the clear prejudice to the defendants from a joint trial, that objective would not be served by a joint trial here.

CONCLUSION

A joint trial in this action would involve not only grave prejudice to the rights of the defendants, but also dangerous and unjustified inroads upon the attorney-client privilege and the indispensable privacy of defense counsel. Such a joint trial would present hopelessly prejudicial conflicts, arising from a situation which the government has largely, though perhaps inadvertently, created. For the reasons set forth above, and in the moving affidavits herewith, the motion to sever should be granted in all respects.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

-against- :

AMREP CORPORATION, *et al.*, :

Defendants. :

- x

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT AGAINST SOLOMON FRIEND FOR VIOLATION OF HIS CONSTITUTIONAL RIGHTS AGAINST SELF-INCRIMINATION AND TO DUE PROCESS OF LAW AND ASSISTANCE OF COUNSEL

The indictment should be dismissed as against Mr. Friend because, as will appear, the Government, in plain violation of the Constitution, failed to warn him of his right to remain silent or to advise him that he was a target of the Grand Jury investigation into alleged mail fraud and land sales violations when he was first called before that Grand Jury. The relevant facts are set forth fully in the accompanying affidavits of Mr. Friend, Irving Parker, Esq., and Stanley Arkin, Esq. They are summarized here.

Facts

In approximately March 1974 a Grand Jury began investigating the activities of AMREP Corporation, the corporate defendant herein. Thereafter, several of the officers and directors of AMREP who had been advised they were targets of the investigation were called before the Grand Jury, told of the nature of the investigation, warned of their rights, and exercised their Fifth Amendment rights. Mr. Friend was not so notified then or for some nine months thereafter.

During these ensuing months, Mr. Friend, General Counsel for AMREP, assisted it in complying with Grand Jury subpoenas and coordinated the company's outside counsel as well as other defense counsel in their endeavors concerning the investigation (Friend Aff. ¶ 3; Arkin Aff. ¶'s 3-4). Mr. Friend did not have even so much as a hint that he, too, might be a target of the ongoing investigation (Friend Aff. ¶ 2; Arkin Aff. ¶ 6).

On January 28, 1975, nine months after the investigation had begun, Mr. Friend was subpoenaed to appear before the same Grand Jury concerning possible obstruction of justice charges. This apparently resulted from the Government's belief that certain materials subpoenaed from AMREP by the Grand Jury had been improperly withheld by the defendants (Parker Aff. ¶ 3).* On January 27,

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* The principal document involved was the so-called Henniger report, which apparently forms the basis of the allegations in the indictment that the defendants supposedly knew Rio Rancho Estates was not a "master-planned" Community and that Albuquerque would not expand in the direction of Rio Rancho.

1975 Mr. Irving Parker, a member of the law firm which represents AMREP generally, spoke with Ms. Hynes, the Assistant United States Attorney in charge of the investigation, concerning Friend's appearance.* During those conversations Ms. Hynes stated in substance that Mr. Friend, personally, was a possible target of the obstruction investigation and, in that regard, might consider retaining an attorney (Parker Aff. ¶ 4). Absolutely no mention was made of Mr. Friend's also being a target of the underlying mail fraud and land sales investigation (Parker Aff. ¶ 5).

Mr. Friend, unaccompanied by counsel, appeared before the Grand Jury on January 28, 1975, as required by the subpoena. After being sworn, Mr. Friend was told that the Grand Jury was investigating a possible violation of the obstruction of justice statute (18 U.S.C. § 1503) and that the Grand Jury did not know what the outcome of the investigation would be or whether it would be determined that he played a role in any violation of section 1503 (Tr. 1/28/75, pp. 1-2). In this context, Mr. Friend was also advised that he had a Constitutional right to refuse to answer any question which might tend to incriminate him and that his testimony should be made voluntarily. (id.) Despite Mr.

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* The Grand Jury had earlier subpoenaed another attorney in Mr. Parker's firm to testify at the obstruction hearing (Arkin Aff. ¶ 5).

Friend's statement that he was not represented by an attorney, Ms. Hynes said that he was entitled to be excused to consult an attorney concerning any questions put to him (Tr. 1/28/75, pp. 2-3). Mr. Friend was not advised that he had a right to remain silent nor, again, that he was a target of the underlying investigation.

Mr. Friend thereafter answered all questions put to him, many of which concerned his status with AMREP and his activities in complying with Grand Jury subpoenas issued in connection with the underlying investigation. Further, Mr. Friend was examined extensively concerning the Henniger Report, as well as two other reports which were considered as "master plans". Questions were put to him both about his own knowledge of these materials as well as the knowledge of other persons subsequently indicted. (E.g., Tr. 1/28/75 pp. 16-24, 26-27, 29) Information concerning these documents bears directly upon the allegations set forth in paragraphs 18(l), 18(n) and 18(o) of the indictment which concern the direction of growth of Albuquerque and the status of Rio Rancho as a "master planned" development. Indeed, paragraph 18(l) (viii) of the indictment refers specifically to the Henniger Report, although not by that name. And it is apparent that these same documents will be the subject of extensive testimony at any trial of this case.

No mention was made during the hearing on January 28 of Mr. Friend's being a potential defendant in the underlying investigation, nor, of course, were any warnings given to him in that context (Friend Aff. ¶ 6). Yet, the very same day, after Mr. Friend had completed his testimony, Ms. Hynes -- astonishingly -- disclosed to Mr. Arkin, who represented several of the AMREP officers who were under Grand Jury scrutiny, that Mr. Friend, too, was among the targets (Arkin Aff. ¶ 6). And, the same afternoon, Ms. Hynes also revealed to Mr. Friend, for the first time, that he was a target of the main investigation (Friend Aff. ¶ 8).

Some months later, Mr. Friend appeared before an additional Grand Jury convened to complete the investigation and testified at a number of sessions. During one such session the following exchange, which bears directly upon the instant matter, occurred between Mr. Friend and Ms. Hynes:

> "A. . . . When I became a target, Ms. Hynes, in January --
>
> "Q. Mr. Friend, please don't characterize when you became a target. I don't believe you are privy to that information.
>
> "A. When I learned that I was a target, which was in January -- I did not know it before . . . ."
>
> (Grand Jury Tr. 9/4/75, p. 25)

This colloquy thus confirmed what seemed an almost inescapable inference from the earlier events; that is, the Government must have known, at least by the time Mr. Friend was called before the Grand Jury on January 28, 1975, that he was a potential defendant, or target, of the on-going mail fraud and land sales investigation. Yet, not only was Mr. Friend not so apprised or given the other requisite Constitutional warnings in this context, but by purporting to give him warnings only concerning possible obstruction of justice charges, the Government in effect misled Friend into testifying without being aware or being able to measure the full impact of his testimony. This, as will be discussed, constituted a plain violation of Mr. Friend's Constitutional rights and requires dismissal of the indictment against him.

Argument

The Government's Failure to Apprise Mr. Friend Before His January 1975 Testimony of His Constitutional Rights and of His Status as a Target of the Mail Fraud Investigation Mandates Dismissal of the Indictment Against Him

Fifth Amendment mandates unquestionably apply to Grand Jury proceedings. E.g., United States v. Monia, 317 U.S. 424, 427-28 (1942). Thus, although not required to apprise a "mere witness" called before a Grand Jury of his Constitutional rights (e.g., United States v. Scully, 225 F.2d 113 (2d Cir.), cert. denied, 350 U.S. 897 (1955), the Government must so warn a putative defendant who is called. Every federal court which has decided this issue has so ruled. E.g., United States v. Mandujano, 496 F.2d 1050 (5th Cir.), cert. granted, 95 Sup. Ct. 1422 (1975)*; United States v. Wong, _____ F.2d _____, No. 74-1636 (9th Cir. 1974), petition for cert. pending, No. 74-635; United States v. Luxenberg, 374 F.2d 241, 246 (6th Cir. 1967); United States v. DiGrazia, 213 F. Supp. 232 (N. D. Ill. 1963)**.

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* The Supreme Court heard argument in the Mandujano case on November 5, 1975, 44 U.S.L.W. 3273.

** Accord, United States v. Jarrett, 393 F. Supp. 874 (S. D. Miss. 1975); United States v. Chevoor, 392 F. Supp. 436 (D. Mass. 1975); United States v. Timonet, 385 F. Supp. 1042 (E. D. La. 1974); United States v. Prior, 381 F. Supp. 870 (M. D. Fla. 1974); United States v. Kreps, 349 F. Supp. 1049 (W. D. Wisc. 1972).

While the Second Circuit has not specifically ruled on this question (*see*, *United States* v. *Winter*, 348 F.2d 204, 208 (2d Cir.), *cert. denied*, 382 U.S. 955 (1965)), the requirement was expressly approved by Judge Frank in his oft-cited concurring opinion in *United States* v. *Scully*, *supra*, and Judge Medina, writing for the court in that case, stated:

> "[O]ne would suppose that, as a matter of ethics or fair play or policy, a prosecutor would in all cases refrain from calling as a witness before a Grand Jury any person who is *de jure* or *de facto* an accused." 225 F.2d at 116.

Mr. Friend was no "mere witness" when he was subpoenaed before the Grand Jury in January 1975. He was, as the record shows, a potential, and subsequently an actual, defendant as to the mail fraud and land sales allegations. The prosecutor admitted that Mr. Friend was among the targets of the on-going investigation on January 28, 1975, immediately after he first appeared before the Grand Jury. And she admonished him during later Grand Jury proceedings not to suggest that it had been in January 1975 when he had initially become a target. The facts thus lead to only two possible conclusions: either, as appears most likely, the Government already considered Mr. Friend as a potential defendant at the time he was called before the Grand Jury on the obstruction of justice charges, or, at the very least, the Grand Jury had begun focusing on Mr. Friend, and his testimony was merely the last straw which tipped the balance toward his becoming a defendant.* In either event, Mr. Friend's Constitutional rights were violated. E.g., United States v. DiGrazia, 213 F. Supp. 232, 233 (N. D. Ill. 1963).

Constitutional warnings are required, of course, in order to ensure that any waiver of fundamental Constitutional rights will be made voluntarily, knowingly, and intelligently. Miranda v. Arizona, 384 U.S. 436 (1966); Escobedo v. Illinois, 378 U.S. 473 (1964). No such waiver occurred at the January 1975 obstruction hearing. Mr. Friend, unsuspecting of his status, agreed to cooperate with the Government when he was subpoenaed, asserted no Fifth Amendment rights, and, indeed, appeared without even personal counsel. As Mr. Friend stated during his testimony on January 28:

> "I am not standing on any technicalities whatsoever. I am trying to be helpful." (p. 43)

The fact is that the effect of the "warnings" given

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* It should be noted that, if the Government believed that Mr. Friend was a possible target for some months before January 1975, its failure to so inform him of that fact constituted a gross violation of the defendants' rights. As the Government well knew, Mr. Friend was acting as counsel for AMREP concerning the Grand Jury proceedings, and, in that context, was participating in confidential meetings among other defense counsel. Thus, by permitting Mr. Friend to continue his attendance at such meetings only to call him to the

(footnote continued on next page)

Mr. Friend before his January 28 testimony was precisely the opposite from that required. Those warnings, as noted, related solely to the obstruction of justice charges, thus lulling Mr. Friend into cooperating and testifying without considering the real impact of his statements on the underlying investigation as well. To withstand Constitutional scrutiny, a warning must *effectively* apprise the witness of his rights. *United States v. Wong*, *supra*, p. 5. Here, as noted, the "warning" was not only ineffective but it was misleading.

Moreover, the warnings given Mr. Friend were, themselves, insufficient. For example, he was merely told that he had "a constitutional right to refuse to answer any question which in [his] opinion may tend to incriminate [him] personally." It was required, however, that Mr. Friend be warned that he had a right to remain entirely silent. *United States v. Scully*, 225 F.2d 113, 116-118 (2d Cir. 1955) (Frank, J., concurring). *See*, *United States* v. *Lawn*, 115 F. Supp. 674 (S.D.N.Y. 1953), appeal dismissed, *sub nom.*, *United States* v. *Roth*, 208 F.2d 467 (2d Cir. 1953); and *United States* v. *Pepe*,

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(footnote continued from preceding page)

Grand Jury thereafter had the effect of planting an "informant" in the defense camp. This, clearly, would constitute prosecutorial misconduct and a plain violation of defendants' Constitutional rights under the Fifth and Sixth Amendments. E.g., *Coplon v. United States*, 89 U.S. App. D. C. 103, 191 F.2d 749 (1951), cert. denied, 342 U.S. 926 (1952); *Caldwell v. United States*, 92 U.S. App. D. C. 355, 205 F.2d 879, cert. denied, 349 U.S. 930 (1955); *In re Terkletaub*, 256 F. Supp. 683 (S.D.N.Y. 1966).

367 F. Supp. 1365, 1368 (D. Conn. 1973). As the court in United States v. Chevoor, 392 F. Supp. 436, 442 (D. Mass. 1975) stated:

> "[T]he defendant was ensnared into a position where he was at least possibly, if not inevitably, going to emerge as a target of the very grand jury before whom he was required to appear. Fundamental fairness required that he not be compelled to testify before the grand jury without at least having been told of his right to remain silent."

Because counsel are excluded from Grand Jury proceedings, a witness who is not advised of his rights to remain silent is left to recognize on his own the incriminating potential in a question and is forced to decide to leave the grand jury room (with the consequent prejudice in the eyes of the grand jurors) to consult with counsel. The court in United States v. Kreps, 349 F. Supp. 1049 (W. D. Wisc. 1972) aptly described (at p. 1053) the circumstances, in dismissing an indictment for failure to give the proper warning to a potential defendant:

> "I cannot say that to receive such a warning would be a small matter for one brought before a grand jury. The setting is forbidding. The circumstances are totally one-sided; only the prosecutor is present with the witness and the grand jury. Even when counsel is available outside the grand jury room, he and his client cannot fully anticipate the directions which the interrogation may take."

In fact, in the instant case, as Mr. Friend told the prosecutor, he was not represented by counsel. Mr. Friend's own status as an attorney, of course, does not in any way diminish the Constitutional requirement that he be expressly warned of his rights. This was recently confirmed in United States v. Prior, 381 F Supp. 870, 877 (M. D. Fla. 1974), in which an indictment returned against an attorney was dismissed because he had not been given the proper warnings when he was called before the grand jury, even though he was then a potential defendant. As the Prior court found (id.), its holding was simply a corollary to the teaching of Miranda v. Arizona, 384 U.S. 436 (1966), wherein the Supreme Court held (at 468-69):

> "'The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clear cut fact."

The Court continued (id.):

> "More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.'"*

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* The fact is that a lawyer, who would be closely attuned to the manner in which any warning is given, would, if anything, be more likely than a layman to be misled by the Government's failure to cite all statutes which are involved.

In sum, Mr. Friend's Constitutional rights were plainly violated by the Government's failure on January 28, 1975 to give him the required warnings concerning the underlying mail fraud and land sales investigation. For this reason, alone, the indictment should be dismissed. As the court put it in United States v. DiGrazia, 213 F. Supp. 232, 233 (N. D. Ill. 1963):

> "If the Government chooses to call a witness before the Grand Jury who is or may be a defendant, its own self-interest as well as a proper regard for constitutional due process would seem to dictate the issuance of a warning and the securing of an immunity waiver. The risk it runs in failing to warn is a quashed indictment."

There is a further, and equally important, reason for dismissal. Mr. Friend was also entitled to be informed that he was a potential defendant, or target, in the underlying mail fraud and land sales investigation before he testified in January 1975. While the Second Circuit pertermitted this issue in United States v. Winter, 348 F.2d 204, 208 (2d Cir. 1965), it cited by footnote to United States v. Edgerton, 80 Fed. 374 (D. Mont. 1897), wherein the court had held:

> "It is fatal to the indictments that the defendant was called to testify in the particular matter from which they resulted, without being informed or knowing that his own conduct was the subject under investigation."

See, *United States* v. *Potash*, 332 F. Supp. 730, 733 n. 4 (S.D.N.Y. 1971), decided by Judge Weinfeld who, sitting by designation also wrote the opinion in *Winter*. See also *United States* v. *Pepe*, 367 F. Supp. 1365, 1367-68 (D. Conn. 1973).

Due process of law and the underlying principles of fundamental fairness upon which it is based require that a target warning be given. As the court stated in *United States* v. *Pepe*, 367 F. Supp. 1365 (D. Conn. 1973): "Unlike an arrested person, for whom the *Miranda* warning includes no similar advice, the grand jury witness does not necessarily know whether the accusatory process is about to center on him" (at p. 1368). Thus, the witness' ability to assess whether his self-incrimination privilege should be invoked may well depend on his receiving a target warning before testifying.

This rule was expressly adopted by the "ABA Project on Standards of Criminal Justice, the Prosecution Function", which states in section 3.6(d):

> "If the prosecutor believes that a witness is a potential defendant he should not seek to compel his testimony before the grand jury without informing him that he may be charged and that he should seek independent legal advice concerning his rights."

The rule has also become a required practice in at lease some United States Attorneys' offices in the country. For example, the United States Attorney for the District of Columbia has issued a guideline in this respect which provides:

> "Any person called before a grand jury who is a target of its investigation or a potential defendant should be so informed and warned of his rights, that is, given a 'Miranda' warning."

Mr. Friend, of course, was given no such advice before he testified in January 1975, although the facts inexorably point to the fact that he was then considered as a target of the mail fraud and land sales investigation. This error was further compounded by the Government's advising Mr. Friend at the obstruction hearing, that he was a possible target on the obstruction charge, without also mentioning the underlying charges. Thus, here, too, Mr. Friend's Constitutional rights were plainly violated.

No one can ever know what would have happened if Mr. Friend had been apprised before his January 1975 Grand Jury appearance that he was a target of the mail fraud and land sale investigation and given the other requisite Constitutional warnings in that respect. Certainly, he would have consulted with a personal attorney. He might well not have testified at all.* Having once appeared before the Grand Jury, pressure existed for him thereafter to counter any negative inference that could be drawn from his testimony or from his failing to testify further. In any event, once Mr. Friend testified on January 28 without proper warnings, the circumstances changed inalterably, and to speculate as to what might or might not have happened if the circumstances had been different would be no more than meaningless and, we suggest, improper guesswork. *E.g.*, *United States* v. *DiGrazia*, 213 F. Supp. 232, 234 (N.D. Ill. 1963); *United States* v. *Kreps*, 349 F. Supp. 1049, 1054 (W.D. Wisc. 1972); and *United States* v. *Edgerton*, 80 Fed. 374, 376 (D. Mont. 1897).

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* Note in this regard that Mr. Friend was able to secure a limited waiver of the attorney-client privilege from AMREP, for which he is the General Counsel, permitting him to testify at the Grand Jury hearing on January 28, 1975. No such waiver was given when he subsequently appeared before the Grand Jury, after he had been informed he was a target of the underlying investigation.

Particularly apposite in this regard is the *DiGrazia* case, in which the court dismissed the indictment because the Government had failed to warn the subsequently indicted defendant of his Constitutional rights when he was called before the Grand Jury. The court noted that, although defendant's Grand Jury testimony did not contain any direct incriminating statements against him, it was not possible to determine whether in fact the defendant's appearance may have been incriminating in the minds of the Grand Jurors. The court thus concluded, in language having direct application here:

> "Whether constitutional rights have been respected should not be the subject of speculation. Where, as here, there is doubt, the only proper action is to dismiss the indictment." (213 F. Supp. at 234)

Nor does Mr. Friend's subsequent Grand Jury appearance alter any of the foregoing. Having once violated his Constitutional rights, the Government cannot be heard to argue that its violation is cured by Mr. Friend's later appearances before the Grand Jury which indicted him. Precisely such circumstances were considered by Judge Frank in his concurring opinion in the Scully case, where he stated (225 F.2d at 117 n. 1) that:

> "If [a potential defendant] gave answers before the grand jury without a warning, the error would not be cured by the fact that, desiring to explain those answers he later voluntarily appeared on advice of counsel and testified before the grand jury."

See also, United States v. DiGrazia, supra, 233.

It is similarly irrelevant whether or not the Government acted in good faith in failing to give Mr. Friend the required warnings at his January 1975 Grand Jury appearance. United States v. Wong, ___ F.2d ____, No. 74-1636 n. 4 (9th Cir. 1974), petition for cert. pending, No. 74-635; United States v. Prior, 381 F. Supp. 870, 877 (S. D. Fla. 1974). The effect upon him was just the same and constitutes a violation of his Constitutional rights.

This Court has the inherent power, when confronted with violations of the sort discussed above, to dismiss the indictment at issue. *United States* v. *DiGrazia*, *supra*, 234; *United States* v. *Lawn*, *supra*, 678; *United States* v. *Pepe*, *supra*, 1370; *United States* v. *Kreps*, *supra*, 1054; and *United States* v. *Chevoor*, *supra*, wherein the court held:

> "Due process means fundamental fairness. The same standard is often what motivates remedial supervisory action by federal courts. And so, whether couched in due process terms or in terms of the court's supervisory powers over grand jury proceedings, the special circumstances of this case require that the defendant's grand jury testimony be suppressed and this indictment dismissed." (392 F. Supp. at 444)

So, here, the circumstances indicate similarly that the indictment should be dismissed.

Conclusion

For all of the foregoing reasons, the indictment as against Mr. Friend should be dismissed.

Dated: January 23, 1976

Respectfully submitted,

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Of Counsel:

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James B. Weidner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

-against- :

75 Crim. 1023 (CMM)

AMREP CORPORATION, *et al.*, :

Defendants. :

- -x

MEMORANDUM IN SUPPORT OF MOTION BY SOLOMON FRIEND TO STRIKE CERTAIN ALLEGATIONS FROM THE INDICTMENT AND TO DISMISS THE INDICTMENT AS VIOLATIVE OF F. R. CRIM. P. 7 AND THE SIXTH AMENDMENT

This memorandum is submitted in support of the motion of the defendant Friend to strike certain allegations from the indictment which have particular significance to him and to dismiss the indictment. The subject allegations, which relate to materials filed by defendants with Government regulatory agencies, are argumentative, vague, incorrect and highly prejudicial. The allegations also reflect on their face the Grand Jury's misunderstanding of applicable filing requirements and of Mr. Friend's actions relating thereto. This apparent misunderstanding as well as the confusing and vague nature of the remainder of the indictment as to Mr. Friend requires its dismissal.

A. Paragraphs 18(g)(xix)-(xxvi) of the Indictment Should be Stricken

It requires no citation to state that allegations which are simply argumentative, statements of opinion, surplusage, or demonstrably false should be stricken, particularly where, as here, they are highly prejudicial. The following allegations, however, are of particular import as to Mr. Friend, because, in his status as General Counsel of AMREP, he was, of course, involved in the filing of materials as required by relevant regulatory agencies. And, as discussed below, the Grand Jury's understanding of these matters would necessarily have had an important effect on its decision to indict him.

As has been shown elsewhere, AMREP is involved in a closely regulated industry. Promotional and advertising materials must be submitted to the State of New York for review and clearance. Detailed Reports must be filed both with the State of New York and with the Federal Government. Many of the "misrepresentations" included in this indictment were specifically set forth in materials approved by New York State, and the material facts supposedly not disclosed by defendants were specifically set forth in the Reports required to be filed with the appropriate governmental agencies and delivered to customers prior to the consummation of a purchase.

Obviously realizing this, the Government succeeded in having included in the indictment a number of allegations in order to anticipate defendant's position thereupon. As will be shown these allegations are simply vague, argumentative, and/or incorrect. They are all highly prejudicial and should be stricken. The applicable allegations are contained in paragraphs 18(g)(xix)-(xxvi) of the indictment. We will discuss each subparagraph separately.

Paragraph 18(g)(xix) alleges that defendants were required to submit some of the written material made available to potential purchasers to the State of New York or to the United States Government for review. The allegation continues: "This review did not, as the defendants and co-schemers well knew, constitute approval or verification by the Government offices that the statements contained" therein were true. The allegation further charges that:

> ". . . as the defendants and co-schemers well knew, it was at all times a crime to represent or suggest that Government offices had approved or verified the truth or non-fraudulent nature of anything contained in these Reports both of which were required to be given to a purchaser prior to the signing of a contract;"

The obvious implication of this allegation is that, either defendants did not file the required materials or that, having filed them, they represented that the "Government offices had approved or verified the truth" of the statements contained therein. Yet, nowhere does the indictment make any such allegations. This allegation is thus, at best, argumentative, misleading and highly prejudicial. It should be stricken.

Paragraph 18(g)(xx) alleges that defendants purportedly caused dinner presentations to be organized so as to not call attention to the Reports filed with the Governmental agencies and "to give the Reports to the persons to be defrauded, if the Reports were given at all, concealed amongst promotional papers." (Emphasis added) The indictment, except by this indirection, does not allege that the Reports were not distributed to potential customers. This sort of "guilt by innuendo" is improper and, again, highly prejudicial to the defendants. This allegation, too, should be stricken.

Paragraph 18(g)(xxi) alleges that the defendants supposedly caused information in the Reports to be "ambiguous, incomplete, inaccurate and incomprehensible to a person of ordinary experience and understanding . . ." This allegation is, at best, vague and argumentative. Precisely what is "ambiguous" or "incomplete" or "incomprehensible" to "a person of ordinary experience" is, at best, a matter of opinion and subject to question. The fact is, as demonstrated elsewhere, these materials were submitted to be reviewed and cleared by the Governmental agencies having responsibility therefor. Obviously, those agencies did not view the materials as improper and to include this sort of vague allegation in a criminal indictment is improper. In any event, this vague allegation should also be stricken.

Paragraph 18(g)(xxii) alleges that the defendants supposedly organized dinner presentations so as to make it "virtually impossible" for the potential purchasers to read and understand the contents of the purchase contracts prior to signing them. Yet this allegation fails to point out that, under the Interstate Land Sales Act, any purchaser of a homesite had 72 hours within which to rescind any purchase which may have been agreed upon. Thus, here, too, the indictment is incomplete and misleading on its face. This allegation, too, should be stricken.

Paragraph 18(g)(xxiii) alleges that the defendants supposedly caused their salesmen to prevent potential customers from removing purchase contracts, reports and other materials from the rooms where sales dinners were held, unless a sale had been made to the purchaser. It is unclear what materiality this allegation is supposed to have to the claimed scheme. Obviously any person who did not make a purchase would not have been misled by any of the materials which that person reviewed. Thus, whether or not the materials were taken from the room where the dinner occurred would simply be irrelevant. Here again, the allegation should be stricken.

Paragraph 18(g)(xxiv) alleges that the defendants were required to file with New York State copies of all advertising, promotional films and literature used in dinner presentations in the State. It continues that the defendants knew that such filing did not constitute approval or verification by the State of the statements contained in the materials so filed. Further, the paragraph alleges:

> "[i]n fact, as defendants and co-schemers well knew it was at all times a crime to represent or suggest that New York State had approved or verified the truth or non-fraudulent nature of anything contained in advertising and promotional material submitted for filing."

Again, the indictment does not allege that the defendants failed to file the materials with the State, as the allegation seems to imply. Even more significantly, the allegation is simply incorrect in its description of the supposed "crime" under New York law.* Thus, this misleading,

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* The indictment alleges it is a "crime" to represent that New York State had approved the truth of anything contained in advertising material submitted for filing. In fact, the applicable statute (Article 9-A of the New York Real Property Law §388(8)) does not so provide. Rather section 338 states that it would be a misdemeanor to represent that the Department of State or any officer thereof "has recommended or

(footnote continued on next page)

incorrect, and highly prejudicial allegation should also be stricken.

Similarly, paragraph 18(g)(xxv), which alleges that the defendants supposedly caused their salesmen to represent that New York State had approved the accuracy of the materials with the correlative implication that defendants thus committed a crime, should be stricken.

Paragraph 18(g)(xxvi) is perhaps the most obvious example of an improper allegation. This paragraph charges that until 1972 defendants' advertising materials "blatantly emphasized" an investment theme. It continues that, in 1972, defendants "came to fear that they might have increasing difficulties with State and Federal regulatory agencies" if such supposedly blatant emphasis continued. Therefore, according to this allegation, in 1972 it supposedly became a part of the scheme for the defendants to:

> "[r]eview and revise their advertising materials and promotional movies so as to shade and qualify the language used concerning investment without,

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(footnote continued from preceding page)

acquiesced in the recommendation of the purchase of any subdivided lands . . ." (emphasis supplied). In other words, the illegal act is in representing the state's recommendation as to purchase of the land, not as to its approval of advertising materials submitted to it. Indeed, the New York regulation relating to submission of advertising materials to the Department of State provides that "in reviewing the advertising or promotional material the Department of State will determine whether the same is in violation of Article 9-A of the Real Property Law . . .", including, of course, the making of false statements therein (19 N.Y.C.R.R. 135.17(c)).

> at the same time, weakening the real impact and effect of these materials as an inducement to financial investment, . . ."

At best, this allegation constitutes no more than an effort by the Government to anticipate defenses and to create an argument responsive thereto. Further, the allegation is vague in the extreme. Precisely what constitutes a "blatant emphasis" is difficult to discern. Even less clear, is the meaning of "shading" and "qualifying" the language. Indeed, one definition of "qualify" would be to ensure that the materials satisfied the applicable regulations. Thus, according to Oxfords Universal Dictionary, Third Edition, the word "qualify" means, among other things, "to modify a statement or opinion by any limitation or reservation" as well as "to moderate or mitigate", "to make less wrong", "to bring into ... proper condition", or to "abate or diminish". It is similarly impossible to discern precisely what the Grand Jury meant by its allegation that the relevant changes were made "without . . . weakening the real impact and effect of these materials . . ." This can be no more [illegible]an a matter of opinion and argument. In short, this vague, argumentative and prejudicial allegation is improper for inclusion in an indictment. As such, it, too, should be stricken.

In sum, the foregoing allegations constitute little more than opinion and argument, included in an attempt to anticipate likely defenses. The instant allegations should be stricken.

B. The Indictment Should be Dismissed as to Mr. Friend

Striking the foregoing allegations from the indictment constitutes far more than the mere removal of "surplusage" as to any charge against Friend. It may well constitute removal of the entire basis of the Grand Jury's indicting him. The law, of course, is clear that only a Grand Jury may alter an indictment; it may not be rewritten by a court. *E.g.*, *Russell* v. *United States*, 369 U.S. 749, 770 (1962), *ex parte* Bain, 121 U.S. 1 (1887); *United States* v. *Norris*, 281 U.S. 619 (1930); and *Stirone* v. *United States*, 361 U.S. 212 (1960).

As the Court put it in the *Russell* case:

> "[T]he settled rule in the federal courts [is] that an indictment may not be amended except by resubmission to the Grand Jury, unless the change is merely a matter of form." (369 U.S. at 770)

Although the instant allegations are located in the "means" section of the indictment, they are in every respect necessary to the charging portion thereof as to Mr. Friend.

Where, as here, the charging allegation (¶13) constitutes little more than a paraphrase of the applicable statute, the particularization contained in the "means" paragraphs are essential to the validity of the indictment and should be viewed in that light. E.g., Russell v. United States, supra, 765; United States v. Hess, 124 U.S. 483, 487-488 (1888); United States v. Simmons, 96 U.S. 360, 362 (1877); United States v. Farinas, 299 F. Supp. 852, 854 (S.D.N.Y. 1969). And, here, the striking of these allegations discussed above is anything but "merely a matter of form."

Thus, the indictment shows on its face (¶10) that Mr. Friend did not even join AMREP until 1970. The indictment is, at best, unclear as to what, if any, participation he had in supposed improper activities after that time. Plainly, however, the submission of materials, which the indictment charges were "shaded" and "qualified", to state and federal agencies under applicable legal requirements could well have been a significant, if not determinative, factor in the Grand Jury's indictment of Mr. Friend, who served as AMREP's General Counsel. Indeed, this is supported by the extensive questioning and testimony of Mr. Friend before the Grand Jury on this subject.

Applicable in this respect, again, is the teaching of the Supreme Court in Russell. There, in dismissing an indictment for insufficiency, the Court stated concerning a charge under 2 U.S.C. §192, but having equal force here:

> "To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him." (369 U.S. at 770)

See also United States v. Curtis, 506 F.2d 985 (10th Cir. 1974). The circumstances here are particularly compelling for the dismissal of the indictment of Mr. Friend. For, as discussed above, not only are the subject allegations argumentative, but they imply the existence of crimes not alleged and, in one instance, misconstrue the nature of a supposed crime which is alleged. Thus, while Grand Jury proceedings are generally regarded as presumptively valid, here, it appears from the face of the indictment, itself, that the Grand Jury was either misled as to the applicable law regarding filings or completely misunderstood the effect thereof. In these circumstances, therefore, the general presumption is inapplicable, and dismissal of the indictment is warranted. Cf., United States v. American Medical Association, 26 F. Supp. 429, 430-31 (D.D.C. 1939).

Further, personal knowledge and participation of a defendant in a mail fraud case must, of course, be shown. E.g., Windsor v. United States, 384 F.2d 535 (9th Cir. 1967); Phillips v. United States, 356 F.2d 297, cert. denied, 384 U.S. 952 (1965). By confusing acts which occurred prior to 1970, when Mr. Friend joined AMREP, with later claimed acts, however, the indictment does not sufficiently apprise Mr. Friend of the charges against him in this regard as required by the Sixth Amendment, and the indictment should be dismissed for this reason, too. See United States v. Curtis, 506 F.2d 985 (10th Cir. 1974); United States v. Zeehendelaar, 498 F.2d 352, 356 (2d Cir. 1974); and United States v. Farinas, 299 F. Supp. 852, 854 (S.D.N.Y. 1969).

In sum, the indictment should be dismissed as to Mr. Friend.

C. COUNTS 71-80 ARE INSUFFICIENT FOR THE ADDITIONAL REASON THAT THEY FAIL TO CONTAIN ALLEGATIONS TO NEGATIVE THE EXEMPTION IN 15 USC 1701(5) WHICH RENDERS THE INTERSTATE LAND SALES ACT INAPPLICABLE TO ATTORNEYS WHOSE REPRESENTATION OF ANOTHER PERSON CONSISTS SOLELY OF RENDERING LEGAL SERVICES

Counts 71-80 of the indictment purport to charge a violation of 15 USC 1703(a). That section makes it unlawful for any "developer or agent" to engage in the prohibitions therein defined relating to the sale of lots in subdivisions.

Paragraph 1 of Counts 71-80 alleges that Friend is a "developer" and "agent" within the meaning of 15 USC 1701(4)(5).

15 USC 1701(5) defines agent as follows:

> (5) "agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation of another person consists solely of rendering legal services:
>
> [Emphasis supplied]

The issue thus raised is whether the indictment is sufficient to charge Friend with a violation of the Interstate Land Sales Act where the indictment itself alleges Friend to be an attorney and where the statute contains a specific exemption applicable to a certain class of attorneys--i.e., those whose services consist solely in the rendering of legal services.

On its face, therefore, the indictment appears to place defendant Friend within the specific statutory exemption. At the same time, no facts are alleged to indicate that Friend's representation of the other defendants did not consist "solely of rendering legal services." Having pleaded facts coming within a portion of the exemption, it is incumbent upon the government to plead remaining facts which would make the exemption inapplicable to Friend.

An analagous situation was also present in Sutton v. U.S., 157 F.2d 2661 (CA 5, 1946). There the regulation involved provided "that no person shall possess a rationed commodity except in accordance with the provisions of a ration order." In holding that it was necessary for the criminal information, by proper allegation to negative the exception, the Court stated: (157 at p. 665)

> "This exception constitutes a part of the definition of the offense. Omit the exception and the order simply provides that no person shall possess a rationed commodity. Clearly no one intended this: therefore it was necessary for the information, by proper allegation, to negative the exception in the first sentence."

Since the indictment on its face appears to place Friend within the statutory exemption, we submit that the failure to allege any facts which could negative that exemption renders Counts 71 through 80 defective as to him. The said Counts should be dismissed as to defendant Friend.

Conclusion

For all the foregoing reasons, the allegations in paragraphs 18(g)(xix)-(xxvi) should be stricken; Counts 71-80 should be dismissed; and the indictment should be dismissed as to Mr. Friend.

Dated: January 23, 1976

Respectfully submitted,

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Of Counsel:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

-v- : 75 Cr. 1023 (CMM)

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - -x

REPLY MEMORANDUM IN SUPPORT OF MOTION TO SEVER

No extended reply is required to the government's lengthy brief. The papers in opposition to the motion to sever actually serve to emphasize the numerous problems which would present a continual danger of mistrial or reversible error in any joint trial of Friend and the other defendants. A few specific points, however, should be briefly noted.

Privileged Communications

As a result of the indictment and joint trial of AMREP's attorney Friend, the government would effectively strip AMREP and its other officers of the attorney-client privilege. It knows that Friend to defend himself, can breach the privilege (Code of Professional Responsibility, DR 4-101(C)(4)), and it knows that this will be the inevitable effect of Friend's indictment unless there is a severance. The government argues, however, that there is no privilege because "the attorney-client privilege does not protect a communication made in furtherance of a crime" (Gov. Br. p. 118).*

That proposition of law has no application to the specific items of exculpatory evidence which would be involved in this trial: None of the communications which Friend would seek to disclose, in his own defense, were made "in furtherance of" any alleged crime. On the contrary, in each instance Friend's testimony will show that he gave advice which was intended to secure compliance with the law, and that at the time he had every reason to believe this advice was being followed. (See Reply Affidavit of Solomon H. Friend submitted herewith). Clearly, a communication which is intended to prohibit or prevent any possibility of unlawful conduct is not "in furtherance of" an alleged fraud.

Under these circumstances, the issue of attorney-client privilege would not be removed from a joint trial even if the prosecution succeeded in establishing a prima facie case. As was held in Burlington Industries v. Exxon Corporation, 65 F.R.D. 26, 40 (D. Md. 1974):

> "The attorney-client privilege is not vitiated merely because a client commits a fraudulent act. Only where the confidential communications between attorney and client concern advice in preparation for the commission of a criminal or fraudulent act, or in the actual commission thereof, is the privilege abrogated."

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* Citations to "(Gov. Br. p.)" are to the Government's Memorandum of Law in Opposition to Defendant's Non-Discovery Motions", filed on March 15, 1976.

As was stated in Union Camp Corporation v. Lewis, 385 F.2d 143 (4th Cir. 1967) (cited at Gov. Br. p. 119), withdrawal of the attorney-client privilege requires a showing "that the lawyer's advice was designed to serve his client in the commission of a fraud or crime." Accord, Pfizer, Inc. v. Lord, 456 F.2d 545, 551 (8th Cir. 1972).*

In the present case, it is absurd to suggest that Friend proposes to testify to communications "in furtherance of" the alleged crime. On the contrary, his testimony would relate to advice which was specifically designed to avoid any possible improper or unlawful conduct. Indicative of the nature of this testimony is one of the privileged memoranda described in the principal moving papers (Glendon affidavit, p. 4), in which Friend advised officers of AMREP:

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* See also Garner v. Wolfinbarger, 430 F.2d 1093, 1102 (5th Cir. 1970), (cited at Gov. Br. p. 119) where the communications excluded from the privilege were defined as those "made by a client to his attorney during or before the commission of a crime or fraud for the purpose of being guided or assisted in its commission." Thus, e.g., in United States v. Kahn, 366 F. 2d 259, 265 (2d Cir. 1966), cert. denied, 385 U.S. 948 (Gov. Br. p. 119) the attorney's communications were intended to coerce or bribe a government witness to refrain from testifying. In United States v. Castellana, 349 F.2d 264 (2d Cir. 1966), cert. denied, 383 U.S. 928 (Gov. Br. p. 119) a prosecution of violations of the Federal Bankruptcy Laws, the attorney-client communications were directly in furtherance of the fraudulent conveyances of the assets.

> "Furthermore, most of the complaints we receive from state agencies relate to statements allegedly made by salesmen and practices contrary to company policy. Some of these consumer complaints emanate more frequently from certain offices than other offices.
>
> "In this business, it is my considered judgment that we must be more chaste than Caesar's wife and that the above aspects of our operation must be tightened up."

And in the conclusion of another privileged memorandum (Glendon affidavit, p. 5), Friend stated to his clients, in reporting on a meeting of the Interstate Land Sales Group:

> "Conclusion: The above reinforces my previous concern that all reasonable steps should be taken to avoid improper references to an investment theme particularly in printed advertising, and to properly control salesmen's oral representations concerning resale investment of guarantees.
>
> "In this connection, as previously discussed with Hank Hoffman, our Rio film and other Rio material should be revised as soon as the film and advertising departments can get to it."

The privileged communications as to which Friend would testify are the very antithesis of communications "designed to serve his client in commission of a fraud or crime". Union Camp Corporation v. Lewis, supra at 385 F.2d 144. Consequently, there is no merit to the government's effort to lift the privilege.

Councils of the Defense

The government has not offered any valid response to the grave constitutional issues which would be presented, in any joint trial of Friend and the other defendants, by the resulting intrusions into councils of the defense, and into defense attorneys' work product. The contention (Gov. Br. p. 94) that Friend continued unchanged in his defense activities, after learning of his status as a target, is simply false. As set forth in the reply affidavit of Solomon Friend herewith, and in the affidavits of Edward Winslow and Stanley Arkin submitted previously, Friend was deeply involved in every aspect of preparing the defense until he learned he was a target, and thereafter sharply curtailed his activities as defense counsel. Moreover, before the prosecution belatedly informed him that he was a potential defendant, Friend, while a member of the defense team, acquired extensive knowledge of facts specifically mentioned in the indictment and not previously known by him, but which if testified to by Friend would exculpate him but would prejudice his clients. In this connection, Friend may be obliged to call other lawyers who represented AMREP in the investigation, in order to corroborate his testimony as to when he first acquired such information (see Glendon Reply Affidavit submitted herewith).

It is still unclear, in the light of the government's papers, why Friend was not warned until January of 1975 that he was a potential defendant.* The one thing which is clear, however, is that for over nine months the government permitted Friend to coordinate and participate in the activities of defense counsel, with full knowledge that he was doing so, and without informing him that he was himself a potential defendant.

Whether the prosecution has created this situation by accident or design, the result has been that any joint trial would place the Court and defendant Friend in an intolerable dilemma. If Friend were permitted to testify, the councils of defense would be breached.** If he is precluded from testifying, he would be deprived of evidence essential to his defense. The breach might well be reversible error. The preclusion of vital testimony would likewise be reversible error.

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* In Friend's principal memorandum in support of his motion to dismiss, defendant called attention (p. 6) to a colloquy in the grand jury which strongly suggested that the government knew before January, 1975, that Friend was a target (Grand Jury Tr. 9/4/75, p. 25). Significantly, the government has made no effort to explain or deny the apparently inescapable inferences from the transcript.

** In re Terkeltoub, 256 F.Supp. 683 (S.D.N.Y.1966), cited with approval in U.S. v. Nobles, 422 U.S. 225, 238 n.12. The prosecution seeks to meet the councils of defense problem by asserting (Hynes Aff., p. 8) that the prosecutor already knew about two examples which were cited in the moving papers. This argument is frivolous. The point is that, as the reply affidavits make clear, there are numerous other items as to which Friend's testimony would necessarily involve knowledge which he first acquired during the investigation, and there is no reason to believe that these are known to the government.

The Prejudicial Spill-Over Effect of Evidence as to Other Defendants

In its opposing papers, the government does not seriously dispute that Friend would be prejudiced by the accumulation of evidence relating to other defendants (see Friend's principal memorandum in support of motion to sever, pp. 31-37). On the contrary, the government indicates an intention to make deliberate use of the prejudicial spill-over effect; thus it makes the astonishing admission (Gov. Br. p. 138) that it will rely on evidence relating to other defendants to "establish directly *or circumstantially* Friend's knowledge of the scheme" [emphasis supplied]. Thus, the prosecution asserts (Gov. Br. p. 137) that it "will prove at a joint trial the fraudulent conduct of AMREP and the corporate officer defendants, including Mr. Friend, beginning with the acquisition of New Mexico land in 1961" -- a date almost a decade prior to Friend's employment.

Thus, the government is seeking to supply, by association and by inference from the conduct of other defendants, essential elements of its case as to Friend which it cannot establish through competent evidence. This position, we submit, is untenable, in view of the well-settled rule that personal knowledge of a scheme to defraud must be proved as to each individual defendant, and cannot be inferred from the conduct or statements of other defendants. *Phillips* v. *United States*, 356 F.2d 297, 303 (9th Cir. 1965), *cert. denied sub nom. Walker v. United States*, 384 U.S. 952; see, also, authorities set forth at pages 34-35 of Friend's principal memorandum.

The gross unfairness of the government's attempt to inculpate Friend by association is further shown by the assertion (Gov. Br. p. 139) that Friend's alleged efforts to "shade and modify"* (whatever that means) AMREP's practices "will be shown in part by comparing AMREP's activities and the fraud before and after Friend joined the scheme." Thus, the government will apparently seek to hold Friend responsible, not only for the activities of co-defendants over nearly a decade preceding his employment, but also for the work of outside counsel who rendered legal services to AMREP in the preceding years. If Friend did not change material which other attorneys, years before, had approved and cleared with the appropriate regulatory agencies (see affidavit of Edward B. Winslow, January 22, 1976), he is somehow to be saddled with whatever the government can make of that material. This, we submit, is unconscionable.

The government argues that a severance should not be granted merely because a defendant may have "a better chance of acquittal at a separate [trial]" (Gov. Br. p. 117). Neither, however, should the government be permitted to misjoin defendant Friend, merely because it hopes thereby to have a better chance of convicting him. The prosecution in this case clearly hopes that the spill-over effect from testimony as to other defendants may compensate for the critical deficiencies in its case against Friend. This, we submit, is precisely the kind of abuse that Rule 14 was intended to prevent.

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* The phrase in the indictment (¶18(g)(xxvi)), however, is "shade and qualify."

A Joint Trial Herein Would Create Unnecessary Risks of Error and Mistrial

Defendant submits that arguments of judicial economy (Gov. Br. p. 115), even if supported by the facts in this case, would not outweigh the prejudice to defendant Friend from a joint trial. In this case, however, even judicial economy would not be served by a joint trial. We have noted, supra, the inherent risk of error arising from the alternative of either excluding substantial testimony, or intruding into the councils of the defense or the attorney-client privilege. Such a risk would be presented, not only by the testimony of Friend and the other attorneys whom he would seek to call as witnesses, but also by the numerous privileged documents which would be offered in his defense. There are numerous documents which have been held privileged by other judges, in addition to those previously submitted to Judge Duffy, which would require rulings of close and difficult questions when Friend sought to introduce them over the objection of his clients. Similar, and perhaps even more difficult, problems would be presented by the inevitable intrusions into the councils of the defense (see Friend Reply Affidavit). When these difficulties can be so easily avoided by a severance, a joint trial would be wasteful as well as unjust.

Similarly, the possibility that co-defendants might not testify at a subsequent trial of Friend (Gov. Br. pp. 127, 135-6) does not warrant denial of a severance. While the outcome cannot be predicted with certainty, it cannot seriously be disputed that there is a substantially greater likelihood that the testimony of the co-defendants will be available for the jury in a separate and subsequent trial. Under these circumstances, severance should be granted. See, U.S. v. Gleason, 259 F. Supp. 282, 284 (S.D.N.Y. 1966), discussed at pp. 28-9 of defendant's principal memorandum; Byrd v. Wainwright, 428 F. 2d 1017, 1022 (5th Cir. 1970).

Considerations of sound judicial management do not warrant incurring such substantial risks of prejudice, delay, or reversible error for the joint trial of a peripheral defendant. The government's half-hearted attempt to deny that Friend is peripheral to its case (Gov. Br. p. 139) is blatantly contradicted by the admission (Gov. Br. p. 138) that the prosecution hopes to make a case against Friend "directly or circumstantially" on the theory that his role consisted of advising

AMREP how to "comply with the rules of various regulatory bodies without these agencies detecting the continuing fraud." In a separate motion, defendant has questioned whether this alleged plot to "comply with the rules" is insufficient as a matter of law to charge a crime; it is noteworthy, also, that nine other attorneys who worked with Friend in this process of compliance have stated their willingness to testify that they worked closely with Friend and that he endeavored throughout to insure that his clients complied with the law (see affidavits annexed to reply affidavit of William R. Glendon).* At the least, however, it would be hard to imagine a more peripheral "role" for a "participant" in an alleged fraud, which allegedly commenced almost a decade before he became the company's attorney.

CONCLUSION

For all the reasons assigned, it is respectfully requested that defendant Friend's motion for a severance should be granted.

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* Note also the principal moving affidavit of Edward B. Winslow who acknowledges his responsibility from 1962 to late 1971 for AMREP's compliance with applicable laws governing the company's registrations, property reports and advertisements.

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Joan M. Markey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

v. : 75 Cr. 1023 (CMM)

AMREP CORPORATION, et al., :

Defendants. :

- x

REPLY AFFIDAVIT IN SUPPORT OF DEFENDANT FRIEND'S MOTION TO SEVER

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SOLOMON H. FRIEND, being duly sworn, deposes and says:

1. I am one of the defendants in this action. I make this reply affidavit in support of my motions to dismiss and for a severance.

2. In its brief in opposition to the severance motion, the government asserts, with respect to my participation in the councils of the defense, that my activities as defense counsel did not change after I was informed that I was a target, on January 28, 1975. This is not true. Before I was informed that I was a target, I was extensively and deeply involved in all aspects of preparing the defense. After I learned of my status as a target, my activities as defense counsel for the other defendants were sharply curtailed.

3. Prior to January 28, 1975, I had no inkling whatever that I was a subject of the grand jury investigation. To the best of my knowledge and belief, AMREP and its officers similarly were unaware that I was a potential target. Indeed, the fact that all of the senior officers had been informed during the early stages of the investigation in 1974 that they could not be ruled out as targets, and had been subpoenaed, while I was not,

I

led me to believe affirmatively that I was not a subject of the mail fraud investigation. This belief was confirmed at the outset of my grand jury testimony on January 28, when I was given warnings as to the obstruction of justice investigation, but not as to the underlying investigation.

4. As set forth in my affidavit of January 23, submitted with the original motion papers, Ms. Hynes informed me on January 28, 1975, for the first time, that I must consider myself a target. This came as a complete surprise to me, and I said something to the effect that she could not be serious. Ms. Hynes then told me that she was serious, and that I should consider myself a target. Prior to that telephone call I had been active in virtually every aspect of preparing the defense, as set forth in the moving affidavits of Edward Winslow and Stanley Arkin.

5. Almost immediately after I was informed of my status as a subject of the investigation, on January 28, 1975, I retained personal defense counsel, and sharply restricted my own activities in preparing the defense. Because of the extensive knowledge that I had acquired during the months while I was unaware of my target status, other defense counsel and I continued to be in frequent contact on a variety of matters. However, I ceased to have any responsibility for reviewing the documents produced pursuant to the grand jury subpoenas. I further ceased interviewing witnesses, and also refrained from attending certain conferences among defense counsel.

6. On November 9, 1975, shortly after I was indicted, I resigned as Senior Vice President and Director of AMREP Corporation and all of its subsidiaries. My efforts, since my indictment, have been concentrated on the preparation of my own defense.

7. My participation in the councils of the defense would have been sharply limited, prior to January 28, 1975, if I had known or believed prior to that date that I was a potential defendant. I would not have deliberately placed myself in my present dilemma, where at a joint trial I would be obliged either to omit testimony helpful to my own defense, or to attempt to invade the rights of other defendants by breaching the councils of the defense.

8. In order to exculpate myself at trial, I would have to testify both as to numerous attorney-client communications, and as to a number of matters which I learned for the first time through my participation in the councils of the defense. I would also seek to introduce large numbers of privileged and confidential documents, in addition to those already submitted to Judge Duffy.

9. Some specific examples of exculpatory testimony and documents, which came to light in the grand jury testimony, have already been set forth in the principal motion papers. It is impossible to provide additional examples without breaking the privileges which the defendants are seeking to preserve. However, such additional instances do exist and, I am advised, would be important to my defense. Thus, if I proffer this evidence at the trial I am breaching the obligations which I have sworn to uphold. If I do not make such a proffer I am deprived of evidence essential to my defense. Under all these circumstances I submit that a severance and separate trial provide the only proper remedy to avoid this total dilemma. .

Solomon H. Friend

Sworn to before me this
day of March, 1976.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

-against- :

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - -x

75 Crim. 1023 (CMM)

REPLY AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STANLEY S. ARKIN, being duly sworn, deposes and says:

1. I make this reply affidavit in further support of the motion by the defendant, Solomon H. Friend, to dismiss the indictment as to him because of violations of his constitutional rights.

2. I note that the Government, in its answering brief (p. 174) states that at no time before Mr. Friend was called before the Grand Jury on January 28, 1975 were my clients, Messrs. Howard and Daniel Friedman and Messrs. Carity, Hoffman and Blum, advised that "they were or were not targets." The fact is that Ms. Hynes had told me, commencing in the early stages of this investigation, that she could not say my clients were not targets and therefore that I must assume that they were targets.

3. I took Ms. Hynes's statements to mean and advised my clients that this was the equivalent of a target status.

Based on my thirteen years of experience in practicing criminal law before the Bar of this Court and dealing with the United States Attorney's Office for this District, the warnings given me by Ms. Hynes were a certain and unmistakable indication that my clients were targets and that Ms. Hynes intended to cause them to be indicted. Never for a moment did I believe anything from Ms. Hynes's statements to me other than that my clients were in fact potential defendants, or targets, of the ongoing fraud investigation.

4. At no time prior to January 28, 1975, after Mr. Friend had testified at the obstruction of justice hearing, was I ever advised or given even the slightest indication that he, too, was a potential defendant, in the principal investigation. On the contrary, my continuing belief, up to that time, was that Mr. Friend was not a subject of that investigation, and I dealt with him accordingly, considering him an essential part of the defense team.

5. Ms. Hynes, of course, was aware of Mr. Friend's efforts as one of the defense counsel prior to January 28. Indeed, I mentioned to her on numerous occasions in words or substance that I was working together with Mr. Friend and Mr. Parker as defense counsel concerning the Grand Jury investigation. I recall also, for example, that witnesses who testified on more than one occasion before the Grand Jury said that they were asked during their second appearance whether they had been debriefed by Mr. Friend or me.

Stanley S. Arkin
Stanley S. Arkin

Sworn to before me this
24 day of March, 1976.

Notary Public

SIGMUND KATZ
Attorney & [illegible] at Law
No. [illegible]
Qualified in [illegible] County
Cert. [illegible] County Clerk
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--------------------------------x

UNITED STATES OF AMERICA

-against-

AMREP CORPORATION, et al.

Defendants.
--------------------------------x

AFFIDAVIT

75 Cr. 1023 (CMM)

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

THEODORE R. SCHREIER being duly sworn, deposes and says:

1. I am an attorney employed as Chief Corporate Counsel by AMREP Corporation. I submit this affidavit in support of the motion of Solomon H. Friend to dismiss the indictment because of violations of his right to be informed of his target status and to receive appropriate warnings when he testified before the Grand Jury on January 28, 1975.

2. I was present in Mr. Friend's office when he received a telephone call from Ms. Patricia Hynes, Assistant United States Attorney, shortly after 4 P.M. on January 28, 1975. I heard Mr. Friend say to Ms. Hynes in words to the effect that, "You surely can't be serious; you must be kidding". Immediately after he hung up, he told me that Ms. Hynes had told him that she could no longer speak to him because he should regard or consider himself a target of the mail fraud investigation.

THEODORE R. SCHREIER

Sworn to before me this
18th day of March, 1976.

LOUIS J. PASTONE
Notary Public, State of New York
[illegible]
Qualified in New York County
Commission Expires March 30, 1974

A 8634

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, : 75 Cr. 1023 (CMM)

v. :

AMREP CORPORATION, et al., :

Defendants. :

- x

REPLY AFFIDAVIT IN SUPPORT OF DEFENDANT FRIEND'S MOTION TO SEVER

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM R. GLENDON, being duly sworn, deposes and says:

1. I am a member of the firm of Rogers & Wells, attorneys for defendant Solomon H. Friend ("Friend"). I make this reply affidavit in support of defendant Friend's motions for a severance and to dismiss the indictment as to him.

2. In opposition to the motion for severance the government asserts (Gov. Br. p. 130) that "Friend has not been definitive about what his defense will be". While Friend is obviously not in a position to set forth his entire defense, in advance of the government's case, many specific examples of the exculpatory evidence involved have already been presented (see Glendon Aff., January 23, 1976, pp. 4-9, 13-15, 17-20; principle Memorandum in Support of Motion to Sever, pp. 6, 12, 23). In this respect Friend has been far more forthright than the prosecution, which for more than a year has been resisting any specific disclosure of the charges against him.

3. To cite one example, it is clear that at trial Mr. Friend will seek to offer the testimony of other attorneys for AMREP, who can corroborate -- if permitted to do so, and not precluded by objections as to attorney-client privilege, work product, or councils of the defense -- that in advising his clients he attempted to secure compliance with the law, and never engaged in the furtherance of any illegal conduct. Annexed to this affidavit are affidavits by the following attorneys, who have stated their willingness to testify in Mr. Friend's defense if permitted to do so:

> Edward B. Winslow, Esq., outside AMREP legal counsel since 1962.
>
> Theodore R. Montoya, Esq., outsie legal counsel for AMREP in New Mexico since approximately 1962.
>
> Carl A. Bertoch, Esq., outside legal counsel in Florida for AMREP and its subsidiaries since approximately 1970.
>
> Foster G. Mori, Esq., outside legal counsel for AMREP in Arizona since approximately 1971.
>
> John M. Greene, Esq., outside legal counsel for AMREP in Florida since approximately 1970.
>
> Max Lilley, Esq., outside counsel for AMREP in Missouri since approximately 1971.
>
> Theodore R. Schreier, Esq., AMREP Legal Department.
>
> I. David Parkoff, Esq., AMREP Legal Department.
>
> Louis J. Bastone, Esq., AMREP Legal Department.
>
> David M. Waldman, Esq., AMREP Legal Department.

It may also be necessary to call the attorneys who represented AMREP during the grand jury investigation, to corroborate Mr. Friend's testimony as to the time when he first acquired knowledge of various items of information. I submit that the problems of privilege, work product, and councils of the defense which are discussed in the original motion papers are real and concrete, and not merely speculative.

4. It is obviously difficult to provide additional examples of exculpatory matters, without breaking the privileges which defendants are seeking to preserve. However, one thing is clear and certain, Friend is entitled to defend himself, but to do so, he may be required to offer testimony which violates important confidences and may substantially prejudice his clients. Only by a severance can this dilemma be avoided.

W R Glendon

William R. Glendon

Sworn to before me this

24 day of March, 1976.

Notary Public

SIGMUND KATZ
Attorney & Counseller at Law
No. 30-7177600
Qualified in Nassau County
Cert. [illegible] County Clerk
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

-against- :

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - -x

75 Crim. 1023 (CMM)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWARD B. WINSLOW, being duly sworn, deposes and says:

I am a member of the firm of Jacobs, Persinger & Parker which has served as outside legal counsel to AMREP Corporation ("AMREP") since February 1968. From 1962 until February 1968 I was a member of the firm of Royall, Koegel and Rogers which served as AMREP's outside legal counsel during that period and while a member of both firms I have been in charge of the AMREP matters. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

In 1969 management of AMREP made the determination that AMREP should have a legal department and, accordingly, SOLOMON H. FRIEND was appointed General Counsel in 1970 to build a legal department which grew to include five additional lawyers.

At the time Mr. Friend assumed his responsibilities and thereafter he consulted with me frequently concerning

AMREP's legal affairs. To the best of my knowledge and belief, Mr. Friend did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule or both and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

Edward B. Winslow

Edward B. Winslow

Sworn to before me this
24th day of March, 1976.

Leocadia A. Borowski

Notary Public

LEOCADIA A. [illegible]
NOTARY PUBLIC, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 75 CR. 1023 (CMM)

AMREP CORPORATION, et al,

Defendants.

AFFIDAVIT

STATE OF NEW MEXICO)
: ss.
COUNTY OF BERNALILLO)

THEODORE R. MONTOYA, being duly sworn, deposes and says:

I have been a member of the Bar of the State of New Mexico since 1961 and have served as outside legal counsel in New Mexico for AMREP Corporation, Rio Rancho Estates, Inc., and other AMREP subsidiaries since approximately 1962. I submit this Affidavit in support of the Motion by Solomon H. Friend for a severance.

I met Solomon H. Friend in 1969 and since that time have worked closely with him and have had numerous conversations with him concerning AMREP's and Rio Rancho's various legal affairs. As such, I am familiar with the character, quality, and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counseled and instructed, with me, for the purpose of rendering valid and proper legal advice for our mutual client, and I verily believe that he did not knowingly participate, aid, or abet, or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule, or both, and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly, and openly testify in his behalf concerning matters of vital importance to his defense.

As an attorney and officer of the Court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's Motion for a severance be granted.

THEODORE R. MONTOYA

Subscribed and sworn to before me this 8th day of March, 1976.

NOTARY PUBLIC

My Commission Expires:

9-1-79

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs. 75 Cr. 1023 (CMM)

AMREP CORPORATION, et al.,

AFFIDAVIT

STATE OF FLORIDA)
SS:
COUNTY OF HILLSBOROUGH)

CARL A. BERTOCH being duly sworn, deposes and says:

I have been a member of the Bar of the State of Ohio since 1957 and of the State of Florida since 1968 and have served as outside legal counsel in Florida for AMREP Corporation and other AMREP subsidiaries since approximately 1970. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

I met SOLOMON H. FRIEND in 1970 and since that time have worked closely with him and have had numerous conversations with him concerning AMREP's various legal affairs. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me for the purpose of rendering valid and proper legal advice for our mutual client and I verily believe that he did not knowingly participate, aid or abet or join in any alleged schemes to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule or both and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

Carl A. Bertoch, Esquire

Sworn to and subscribed before me this 9th day of March, 1976.

Notary Public

My Commission Expires: Notary Public, State of Florida at Large
My Commission Expires Sept. 24, 1976

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, vs. AMREP CORPORATION, et al.,	]	No. 75 Cr. 1023 (C.M.M.) AFFIDAVIT

STATE OF ARIZONA]
] SS.
COUNTY OF MARICOPA]

FOSTER G. MORI, being first duly sworn, deposes and says:

I have been a member of the Bar of the State of Arizona since 1950 and have served as outside legal counsel in Arizona for AMREP Corporation and certain of its subsidiaries since approximately 1971. I submit this affidavit in support of the Motion by Solomon H. Friend for a severance.

I met Solomon H. Friend in or about 1968 and since 1971 when I became outside Arizona legal counsel for AMREP Corporation have worked with him and have had numerous conversations with him concerning AMREP'S various legal affairs. I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counseled and instructed with me for the purpose of rendering valid and proper legal advice for our mutual client. I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities.

I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify and which arose out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule or both and consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the Court, I respectfully request, in the interest of justice and fair play, that Mr. Friend's motion for a severance be granted.

Further affiant sayeth not.

FOSTER G. MORI

Subscribed and sworn to before me this 8th day of March, 1976.

NOTARY PUBLIC

July 27, 1977
Notary Expiration Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

75 Cr. 1023 (CMM)

vs.

AMREP CORPORATION, et. al.

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STATE OF FLORIDA)
SS:
COUNTY OF MARION)

JOHN M. GREENE being duly sworn, deposes and says:

I have been a member of the Bar of the State of Florida since 1950 and maintain offices for the practice of law in Ocala, Florida. I have served as outside legal counsel in Florida for AMREP Corporation and other AMREP subsidiaries since 1970. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

I met SOLOMON H. FRIEND in 1970 and since that time have worked closely with him and have had numerous conversations with him concerning AMREP'S various legal affairs. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him, including matters affecting the interests of purchasers from AMREP. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me for the purpose of rendering valid and proper legal advice for our mutual client and I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule or both and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

On the other hand, while I would still be bound by these rules, it is my opinion that counsel for AMREP would be willing to waive them at Mr. Friend's request if Mr. Friend's case is tried separately.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

SWORN TO AND SUBSCRIBED before me this 15th day of March, 1976 by John Montgomery Greene.

John M Greene

John Montgomery Greene

Notary Public,
State of Florida at Large

My commission expires: 7/31/1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA
75 Cr. 1023 (CMM)

VS

AMREP CORPORATION, et. al.

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STATE OF MISSOURI)
SS:
COUNTY OF)

MAX LILLEY being duly sworn, deposes and says:

I am a member of the Bar of the State of Missouri since 1948 and maintain offices for the practice of law in Springfield, Missouri. Since 1971 I have represented AMREP Corporation and certain of its subsidiaries concerning its legal affairs in the State of Missouri. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

I met SOLOMON H. FRIEND in 1971 and since that time have worked closely with him and have had numerous conversations with him concerning AMREP's various legal affairs. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me for the purpose of rendering valid and proper legal advice for our mutual client and I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule or both and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

A 8648

As an attorney and officer of the Federal and State Court in Missouri, I know of no facts that will establish the charges against him.

I have no information which indicates that Mr. Friend is guilty of the charges against him; therefore, it appears to me that his Motion for Severance should be granted.

Max W. Lilley
Max W. Lilley

Subscribed and sworn to before me this [illegible] day of March, 1976.

Notary Public

My Commission expires [illegible].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

vs. 75 Cr. 1023 (CMM)

AMREP CORPORATION, et. al.

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STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

THEODORE R. SCHREIER being duly sworn, deposes and says:

I have been a member of the Bar of the State of New York since 1956 and have been employed in the Legal Department of AMREP Corporation since July 1973. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

Since my employment at AMREP Corporation, I have worked for and reported directly to Mr. Friend who is General Counsel of AMREP. In rendering legal services for AMREP and its various subsidiaries, I have been in constant contact with Mr. Friend, have had numerous conversations with him and worked with him on AMREP's various legal affairs on virtually a daily basis. I also worked with Mr. Friend and Jacobs, Persinger & Parker, attorneys for AMREP during the grand jury investigation of this matter. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me and all other members of his legal staff for the purpose of rendering valid and proper legal advice and I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule, the counsels of the defense or all three of these and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

Sworn to before me this
10th day of March, 1976.

Theodore R. Schreier
Theodore R. Schreier

Janice C Gengler

JANICE C. GENGLER
Notary Public, State of New York
No. 30-[illegible]
Qualified in Nassau County
Commission Expires March 30, 19 77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

75 Cr. 1023 (CMM)

vs.

AMREP CORPORATION, et al.
-----------------------------------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I. DAVID PARKOFF, being duly sworn, deposes and says:

I have been a member of the Bar of the State of New York since 1972 and have been employed in the Legal Department of AMREP Corporation since September 1971. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

Since my employment at AMREP Corporation, I have worked for and from time to time have reported directly to Mr. Friend who is General Counsel of AMREP. In rendering legal services for AMREP and its various subsidiaries, I have been in constant contact with Mr. Friend, have had numerous conversations with him and worked with him on AMREP's various legal affairs on a continuing basis. I also assisted Mr. Friend and Edward B. Winslow in 1975 in the preparation of the HUD Statement of Record and Federal Property Report for Rio Rancho Estates. I also assisted Mr. Friend and other members of AMREP's Legal Department in connection with the investigation which led to the present indictment. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me and all other members of his legal staff for the purpose of rendering valid and proper legal advice and I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule, counsels of the defense, or all of these and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

I. David Parkoff

I. David Parkoff

Sworn to before me this
12th day of March, 1976.

Janice C. Gengler

JANICE C. GENGLER
Notary Public, State of New York
No. 30-4507022
Qualified in Nassau County
Commission Expires March 30, 19 77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

vs. 75 Cr. 1023 (CMM)

AMREP CORPORATION, et. al.

--------------------------------x

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

LOUIS J. BASTONE being duly sworn, deposes and says:

I have been a member of the Bars of the State of New York and State of Connecticut since 1959 and 1972 respectively, and have been employed in the Legal Department of AMREP Corporation since May 1971. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

Since my employment at AMREP Corporation, I have worked for and reported directly to Mr. Friend who is General Counsel of AMREP. In rendering legal services for AMREP and its various subsidiaries, I have been in constant contact with Mr. Friend, have had numerous conversations with him and worked with him on AMREP's various legal affairs on virtually a daily basis. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me and all other members of his legal staff for the purpose of rendering valid and proper legal advice and I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule or both and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

Sworn to before me this
3 day of March, 1976.

C. Jean Pierce
C. JEAN PIERCE
Notary Public, State of New York
No. 31-8368300
Qualified in New York County
Commission Expires March 30, 197[illegible]

Louis J. Bastone

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

vs.

AMREP CORPORATION, et. al.

75 Cr. 1023 (CMM)

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STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

DAVID M. WALDMAN being duly sworn, deposes and says:

I have been a member of the Bar of the State of New York since 1965 and have been employed in the Legal Department of AMREP Corporation since June 1972. I submit this affidavit in support of the motion by SOLOMON H. FRIEND for a severance.

Since my employment at AMREP Corporation, I have worked for and reported directly to Mr. Friend who is General Counsel of AMREP. In rendering legal services for AMREP and its various subsidiaries, I have been in constant contact with Mr. Friend, have had numerous conversations with him and worked with him on AMREP's various legal affairs on virtually a constant basis. I also worked with Mr. Friend on this matter, after the investigation began in March, 1974. As such, I am familiar with the character, quality and propriety of the legal advice and services rendered by him. To the best of my knowledge and belief, Mr. Friend counselled and instructed with me and all other members of his legal staff for the purpose of rendering valid and proper legal advice and I verily believe that he did not knowingly participate, aid or abet or join in any alleged scheme to defraud or other improper or illegal activities. In this regard, I believe that my testimony in Mr. Friend's behalf would be very favorable in helping to establish his innocence of the charges against him. However, the various matters concerning which I would testify, arising out of conversations and work performed with him, may be covered by the attorney-client privilege, the work product rule, counsels of the defense, or all of these and, consequently, at a joint trial my testimony may be restricted or perhaps even prohibited. The result may very well be that I may not be permitted to fully, frankly and openly testify in his behalf.

As an attorney and officer of the court, I respectfully request, in the interests of justice and fair play, that Mr. Friend's motion for a severance be granted.

David M. Waldman

Sworn to before me this
15th day of March, 1976.

Janice C. Gengler

JANICE C. GENGLER
Notary Public, State of New York
No. 30-4337092
Qualified in Nassau County
Commission Expires March 30, 19 22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

THE UNITED STATES OF AMERICA : 75 Cr. 1023 (CMM)

-v-

AMREP CORPORATION, et al.,

Defendants

CARITY AND FRIEDMEN NOTICE OF MOTION FOR DISMISSAL OF THE INDICTMENT, SUPPRESSION OF EVIDENCE, AND SEVERANCE OF DEFENDANT FRIEND

- -X

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Peter Fleming, Jr., sworn to on the 23rd day of January, 1976, the Indictment, and upon all papers and proceedings had heretofore herein, the undersigned will move this Court at a Motion Part to be held before the Honorable Charles M. Metzner, United States District Judge, in the United States Courthouse, Foley Square, New York, New York at a time and place to be fixed by the Court:

1. For an order pursuant to Rule 12 of the Federal Rules of Criminal Procedure, and the Fifth and Sixth Amendments to the Constitution, dismissing the Indictment on the grounds that (a) the prosecution deliberately violated the defendants' attorney-client privilege during the grand jury investigation, (b) the prosecution's conduct during the grand jury investigation deprived the defendants of their Fifth Amendment right to due process and their Sixth Amendment right to effective assistance of counsel, and (c) the allegations of the indictment are insufficient to support charges of fraud under the Mail Fraud Act or Interstate Land Sales Act.

2. For an order suppressing all evidence obtained in violation of the defendants' attorney-client privilege and of their Fifth and Sixth Amendment rights under the Constitution and any leads derived therefrom.

3. For an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure, severing the defendant Solomon H. Friend from the trial of the defendants.

4. For any and all relief requested by co-defendants which is or may be applicable to the defendants Carity and Friedman.

5. For such other and further relief as to this Court may seem proper and just.

Dated: New York, New York
January 23, 1976

Very truly yours,

CURTIS, MALLET-PREVOST,
COLT & MOSLE

By______________________
A Member of the Firm
Attorneys for Chester Carity
and Daniel Friedman
100 Wall Street
New York, New York 10005
(212) 248-8111

TO:
HON. THOMAS J. CAHILL
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

: 75 Cr. 1023 (CMM)

-against- : AFFIDAVIT IN SUPPORT OF MOTIONS TO DISMISS, SUPPRESS EVIDENCE AND SEVER A CO-DEFENDANT

AMREP CORPORATION, ET AL. :

Defendants.:

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER FLEMING, JR., being duly sworn, deposes and says:

1. I am a member of the firm of Curtis, Mallet-Prevost, Colt & Mosle, counsel for the defendants Chester Carity and Daniel Friedman. I submit this affidavit in support of these defendants' motions (a) to dismiss the indictment on the grounds that their attorney-client privilege, their Fifth Amendment right to due process before the grand jury, and their Sixth Amendment right to the effective assistance of counsel before the grand jury, all were violated during and as a part of the grand jury proceeding, (b) to suppress all evidence and leads obtained in this manner, and (c) to sever the trial of the defendant Friend from the trial of Carity and Friedman. Unless otherwise indicated, all facts set forth in this affidavit are upon information and belief.

2. Chester Carity is a senior officer and a director of the defendants AMREP and Rio Rancho, and an officer of the defendant ATC Realty. Daniel Friedman is an officer and director of AMREP and an officer of Rio Rancho. Solomon H. Friend, a co-defendant, has been inside general counsel to AMREP since 1970.

3. The indictment charges the defendants with violation of the Mail Fraud Act (seventy counts) and violation of the Interstate Land Sales Act (ten counts) in connection with the sale of land in New Mexico (Rio Rancho Estates). Essentially, the indictment charges that the defendants defrauded the purchasers of land in Rio Rancho Estates through certain alleged representations regarding, among other things, market value, appreciation, and services available for each lot.

A. THE FACTUAL BASIS OF THE MOTIONS

4. Since 1970, Friend, as general counsel to AMREP, has been the primary legal adviser to AMREP and its executives. In the discharge of their corporate responsibilities, Carity and Friedman frequently sought Friend's legal advice concerning a variety of subjects, including the development and operation of Rio Rancho Estates. In turn, Friend has advised the corporation and its executives of his legal opinions regarding a variety of subjects, including the operation and development of Rio Rancho Estates.

5. Furthermore, with the institution of the grand jury investigation in this matter in or about March, 1974, Friend became actively involved in the actual defense of

AMREP and its executives. Friend engaged in counseling with and advising other attorneys for defendants in the investigation, including the corporation's outside counsel. In his dual capacity as inside general counsel and member of the defense counsel team, Friend was a party to numerous privileged communications, both from the defendants and their attorneys. Friend was not advised that he was a target of the grand jury investigation until eight months after the investigations began.

6. Beginning on or about January 28, 1975, Mr. Friend appeared to testify before the grand jury on eleven separate occasions. Mr. Friend voluntarily waived his right against self-incrimination. The other targets however refused to permit Mr. Friend to testify concerning matters protected by the attorney-client privilege. Knowing this, the Assistant nonetheless questioned Friend continuously about matters privileged on their face.

7. There can be no doubt that the Assistant knew of Mr. Friend's delicate position as a witness. See, e.g., Tr., 7/24/75, pp. 3-6:*

> "As such, I have been the attorney for the Amrep Company and while I can willingly and freely waive my privilege against self-incrimination, I cannot waive my responsibilities as an attorney to refrain from revealing any confidential information which the clients give to me. That is an oath which I took when I became an attorney twenty-seven years ago.

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*References "Tr." are to Friend's grand jury testimony.

> So, subject to the fact that there is this privilege and that I have been privy to discussion with other lawyers in this case, I will -- I want to cooperate with this investigation. I want to answer all questions that I properly may and I feel that as an attorney I am also an officer of the Court.
>
> * * *
>
> A I also want to mention the fact that there is a counsel for the defense.
>
> As you know, I have been working on this matter with other lawyers for the past year and a half and as such, I have become privy to all kinds of information that the lawyers have been working on and I don't feel that it would be fair or morally correct for me, despite my desire to reveal everything to you to convise.
>
> The rules known, as the counsel for the defense, I cannot unless, of course, a judge orders me to do so. I would certainly be unable to reveal any confidential discussion I had with other lawyers in this case."

8. The prosecutor's continuous inquiry produced violations of the privilege in three respects. First, in some instances, Mr. Friend would claim the attorney-client privilege with regard to a written communication, thereafter refresh his recollection by reading the communication to himself, and then testify fully and completely as to the substance of the communication. See, e.g., Tr., 7/29/75, pp. 6-7:

> "While I am not a liberty to reveal this memorandum because counsel has not received a waiver of the privilege, the attorney-client privilege, it does refresh my recollection that I told the head of the advertising department, the attorney in the legal department, and the head of the film department, in effect that I wanted not only the film changed, but I wanted the advertising changed, and I wanted it done quickly.

* * *

> . . . That is the problem I have, Ms. Hynes, I can't tell you everything as much as I want to because the company has not waived my attorney-client privilege, and I cannot therefore tell you the things that I did that I know were done honestly.
>
> I believe I am allowed to use this to refresh my recollection as to what happened without actually turning in the memo."

9. The prosecutor knew that his procedure was Friend's and was not based on any waiver of the privilege by the other targets.

10. Second, Friend, in response to specific questions before the grand jury, from time to time disclosed information which had come to his attention as a member of the team of defense counsel representing the AMREP and its executives against indictment. In this manner, the prosecution was able to obtain privileged information out of the very councils of the defense, and in essence was able to invade and interfere with the effective legal representation of the various targets of the grand jury investigation. The information thus acquired included matters such as the fact that defense counsel were debriefing witnesses who had appeared before the grand jury, and the substance of those debriefings. See, e.g., Tr., 9/9/75, pp.22-25:

> "On the advice of my counsel -- and it's been very difficult for me to function as a lawyer for the company because anything I do with the company here -- I'm sitting in the Grand Jury room. It's almost an impossible situation.
>
> So what I am saying is that in debriefing various witnesses, I learned -- and I think it was from Neil Godwin -- I learned that report --

* * *

> I understand, also, from the various debriefings, including, I believe, Neil Godwin, that there is some question as to the accuracy of that report --
>
> Q In what respect?
>
> A Because apparently either the casing on the well, which I believe is a pipe that you put in the hole, collapsed, or the sand somehow got into the pumping mechanism or rocks fell into the bottom. I don't know the details at this point. I can find out and let you know.
>
> But I can tell you that my recollection, while I was functioning actively as the attorney for the company in this case with Stan Arkin and with Irving Parker and Ed Winslow and Joan and all of the other lawyers that have been involved in this case, that there is some question concerning the accuracy of the depth of that water.
>
> * * *
>
> A I don't remember. I didn't interview Neil Godwin. I read his debriefing. I just don't remember.
>
> But I do know that there were debriefings which suggest and indicate that the depth of water of the Shell drilling and the Western test drilling program, that that is not necessarily conclusive.
>
> But I wasn't involved in that so I am just telling you my role as a lawyer in this, what I found out and if I were actively involved in this litigation as a lawyer, hopefully not as a defendant, I think a respectable argument could be made as to what the depth of water is."

11. Finally, under pressure of a threat by the prosecutor that Friend should take steps to produce the actual privileged documents or face indictment, those documents were themselves produced physically by Friend. The threat by the prosecutor took place in the presence of the

grand jury during Friend's appearance on September 11, 1975, and was contained in a series of questions and answers which were more in the nature of colloquy than interrogation.

Tr., 9/11/75, pp. 54-57:

> "Q The Grand Jury has asked me to convey to you their interest in seeing these memos. If it is your contention to the Grand Jury that these memos show that you did not play a role in a fraudulent scheme should the jury find that there was a fraudulent scheme, and that there are steps available to you if the client determines that it is privileged where as a lawyer you are aware that if a lawyer is charged, an accusation is made against a lawyer, that he can defend himself, and that the attorney-client privilege will not inhibit a lawyer from defending himself against a charge; you are aware of that?
>
> A Yes, but the company lawyers don't agree with that.
>
> Q Whether the company lawyers agree or not, Mr. Friend, the issue is if these memos in your opinion really would show this Grand Jury that you should not be indicted, then the Grand Jury wants to see those memos, and the Grand Jury wants you to take steps that would result in a ruling. You can go to a judge and present the situation that you are a target of a Grand Jury investigation, that you believe that you have a defense, that these memos would show that you have a defense, and that therefore you should be relieved from the attorney-client privilege, and should be able to turn these memos over. That is something that the Grand Jury has specifically asked me to ask you to take steps to do.
>
> With respect to any memoranda that you believe would prove to this Grand Jury that you should not be indicted, we want the memo turned over, the Grand Jury wants the memo turned over, or steps taken to have it turned over by a judge.

A Miss Hynes, I appreciate the Grand Jury's request. Maybe you or they are not aware of the fact that I have with my counsel tried in the utmost of good faith to be relieved of my obligation to retain in confidence papers which various judges of this court have already held to be privileged.

In other words --

Q Mr. Friend, they have held to be privileged on the basis of the client invoking the privilege.

A That is correct.

Q Not on the basis of Sol Friend saying "I am a target of a Grand Jury investigation with a defense that these memos would show."

We understand --

A I have said that.

Q We understand that you have gone and asked, based upon your testimony, that the client waive the privilege, and the client has refused. We are now saying to you that the next step you should take is go to a judge in this court house and say "I am a target of an investigation, that I want these memos turned over."

I would want you to do that on notice to me, and I would be very happy to confirm to a judge that you are a target, and that the Grand Jury has expressed an interest in having these memos turned over. That is what the Grand Jury is asking you to do.

We have already assumed that you have asked the client to waive the privilege and the client has refused.

A I state under oath that not only have I asked the client, but I have asked their lawyers, several of them, and they will not waive the privilege, which is their right.

Q The next step is yours.

> A Mr. Glendon has discussed this with me this morning. He is my lawyer, as you know, and he will proceed as my counsel to take whatever steps are necessary.
>
> I do want you to know that I have here a batch of these, all of which have been held privileged.
>
> Q I can only tell you --
>
> A I'm in a heck of a spot.
>
> Q I am telling you what you can do. I am telling you what the next step is.
>
> A There is a legal question. I am in favor of presenting them to you, and I will certainly ask my lawyer to present it to a judge to get a ruling so that I can deliver to you and to the Grand Jury every single memo that I wrote which in my judgment would establish beyond question, not only my good faith, but my good advice.

12. The threat that Friend should produce the privileged documents or face indictment was entirely improper. It was no different than a threat that a subject of investigation should waive his right to remain silent or face indictment. It therefore constituted a blatant violation of a valid privilege, long-honored at common law, and was in derogation of the prosecutor's responsibility as prosecutor, the Constitution, the controlling case law, and Rule 1101(d) of the Federal Rules of Evidence.

13. In response to the prosecutor's threat, on October 1, 1975, Friend moved before the Honorable Kevin T. Duffy, United States District Judge, for an order granting Friend leave to produce the privileged documents. The documents fell into two categories: (a) documents which had been held privileged in a prior judicial proceeding, and

(b) documents as to which the privilege still was asserted. The basis for Friend's application, which is more fully set forth in the Glendon Affidavit submitted in support of Friend's motions in this case, was that an attorney was entitled to breach the privilege if this were necessary to defend himself against criminal charges.

14. At the hearing before Judge Duffy, counsel for the corporation and counsel for the various executives continued to assert the privilege. Their position was that the corporation and the executives had no objection to the production of the documents in question so long as their production would not constitute a waiver of the privilege with regard to other matters, including communications and information to which Friend was privy as a member of the team of defense counsel. The prosecution refused to make such a concession and in essense argued to Judge Duffy that the question of a violation of the attorney-client privilege was not before that Court (Exh. A, p. 8).

15. On October 15, 1975, Judge Duffy granted Friend's application for leave to produce the documents. Judge Duffy however noted specifically "the continuing assertion by the corporation of its attorney-client privilege with respect to these documents" (Exh. B, p. 3). The documents thereafter were produced to the grand jury.

16. For reasons set forth in our memorandum of law submitted to this Court on this motion, we urge that the conduct of the prosecutor requires dismissal of the indictment. The prosecutor knew of Friend's access to privileged communications arising out of both his services as inside

counsel to the corporation and its executives, and his service as a member of the team of counsel defending against the grand jury investigation. The prosecutor nonetheless insisted upon pursuing lines of inquiry which resulted in continued violation of both the privilege itself and, with regard to information obtained as a member of the team of defense counsel, the violation also of the defendants' Sixth Amendment right to the effective assistance of counsel.

17. The prosecutor's deliberate conduct violated the defendants' privilege. It also violated the defendants' Fifth Amendment right to due process, and their Sixth Amendment right to the effective assistance of counsel. Since the prosecutor's misconduct reached constitutional dimension, the indictment must be dismissed regardless of prejudice to any of the defendants. But prejudice abounds in any event. Substantial privileged information was obtained which under ordinary concepts of law was private and unobtainable. Moreover, the persistent questioning elicited Friend's consistent complaint that, while he would like to testify, his clients had refused to waive the privilege. A lay grand jury could only understand this refusal as an attempt by the other subjects of the investigation to obstruct their inquiry. Finally, the repeated intrusion into the councils of the defense disclosed information with regard to tactics and preparation which might also have prejudiced the grand jury, e.g., the tactics of debriefing

a witness, and which certainly provided the prosecution with information to which it was not entitled, and which is of obvious value to the prosecution in preparing for trial.

WHEREFORE, this Court respectfully is urged to dismiss the indictment for the reasons stated, as supported by the authority presented in our memorandum of law, together with such other and further relief as may seem just.

DATED: January 23, 1976
New York, New York

Peter Fleming Jr.

Sworn to before me this

23rd day of January 1976

Notary Public

CAREN S. BRUTTEN
Notary Public, State of New York
No. 24-4[illegible]0737
Qualified in Kings County
Commission Expires March 30, 197_

A 8671

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x
:
IN THE MATTER OF THE APPLICATION
:
OF
:
SOLOMON H. FRIEND
:
- x

BEFORE:

HON. KEVIN T. DUFFY,
District Judge

New York, New York
October 1 1975
11:30 a.m.

APPEARANCES:

PATRICIA N. HYNES,
Assistant United States Attorney

JOAN DACEY,
Attorney for Amrep Corporation

WILLIAM R. GLENDON, Esq.,
GUY C. QUINLAN, Esq.,
Attorneys for Movant-Applicant

STANLEY ARKIN, Esq.,
Attorney for Certain Officers of Amrep Corp.

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THE COURT: Tell me what the problem is. I read your papers. Anything to add to it?

MR. GLENDON: I think not, your Honor.

We are here to seek the assertion of the attorney-client privilege and the only point I'd really make, it seems so utterly logical to permit an attorney of unblemished and fine reppte to take whatever appropriate steps he can to convince the grand jury that he should not be indicted, with the catastrophic consequences that would result, even from what we would believe is an unjustified indictment, that we do urge that the Court consider the equities as well as the law and we think the law is a little too -- the case which was cited, the Meyerhoff case, seems to indicate the mere filing of a civil complaint was enough to justify the attorney's efforts on behalf of the plaintiff in this civil case.

Obviously how much more damaging are the consequences of an indictment.

So for all the reasons we stated, we would urge that Mr. Friend be permitted to avail himself --

THE COURT: Who's got the documents?

MR. GLENDON: The documents are here and we have a set of approximately 75 in number.

If I haven't made it clear, I would like to sort of indicate the code we put in there. May I then hand up the documents?

THE COURT: Yes. I assume there is no objection.

Who is here representing the corporation?

MS. DACEY: I represent the corporation, your Honor. My name is John Dacey. The corporation --

THE COURT: The only question I have right now is, do you object to my taking a look at the documents?

MS. DACEY: I have no objection to your taking a look at the documents.

THE COURT: All right. Let's go from there.

The position of the corporation is that all these documents are privileged and therefore they should not be released.

MS. DACEY: According to the code that is worked out, some of them are not privileged. The corporation during this eighteen or nineteen month investigation has consistently asserted the attorney-client privilege on documents that were within the demands of the subpoenas issued by the grand jury and which we believe are privileged, and we presented them to the Court and they have ruled they were producible since they fell within the demands of the subpoenas.

When Mr. Friend gathered these documents together and asked to be able to produce them before the grand jury,

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the corporation agreed that he would be allowed to produce them before the grand jury upon the condition that the Government would agree that the production of these documents would not be and would not be deemed to be and the Government would not claim it to be a waiver of the attorney-client privilege as to any other document or as to any privileged conversation.

We have discussed this with the Government; the Government's position was that it would not agree to this and therefore the corporation feels that it must oppose the production of these documents.

THE COURT: Mr. Arkin, on behalf of the people that you represent, you take the same position?

MR. ARKIN: I do. I should like to add briefly to it.

I represent, if your Honor please, the president and the executive vice president, et cetera, of the Amrep Corporation; each of them of course has an attorney-client privilege falling from their position as officers of the corporation.

There is some question as to whether the corporation can waive-- we have no objection to these documents going in. It is our position, though, that the failure to or rather not the failure, but the fact that we no longer assert the attorney-client privilege should not operate (1) to destroy the privilege as to other documents, or (2) as to attorney-client conversations or more particularly in respect to what I would consider Sixth Amendment conversations or communications which Mr. Friend,as the corporation counsel, received within the last nineteen months during his investigation.

My concern there is this: That I have been representing the principals of the corporation since March or April of 1974 in this long and ongoing investigation on the merits of which I will not comment.

In the course of my representation, I have consulted very carefully and very closely with Mr. Friend in terms of strategy and what thoughts we had on the merits of the investigation -- the merits of the prosecution -- and in effect he has worked very closely with me in defending against the possible indictment,in preparation in the event there is an indictment, and I would only hope and say that the fact that we waive the attorney-client privilege to this very limited extent as to these particular documents does not operate in any way to free up any communications in respect to the council of the defense - - it is a term of art used to describe that Sixth Amendment privilege -- as well as other documents, our conversations.

That is our position.

MS. HYNES: Your Honor, can I be heard briefly?

THE COURT: Sure.

MS. HYNES: My name is Patricia Hynes, and I am an Assistant United States Attorney.

Let me just make two points: (1) Ms. Dacey recounted a proposal that she made to the Government with respect to these documents that have been handed to your Honor and her proposal, as she just recounted it to the Court, was that in turning over these documents, the corporation would not be waiving its privilege with respect to any other document or with respect to any conversation.

The first time I heard the word "conversation " was when she just said it to your Honor.

And let just correct one other thing. Mr. Arkin has stated he does represent individual officers of the corporation for whom he appears and as to the attorney-client privilege, the Court may take into consideration the waiver of the attorney-client privilege as it may affect his clients.

The attorney-client privilege is the privilege of the corporation. The fact that it may incriminate any officer of the corporation is not -- and the law is very clear on this issue -- a basis for withholding a document from the grand jury. The privilege is the corporation's. The fact that those documents may --

THE COURT: I thought he was talking about conversations that occurred between Mr. Friend, his clients --

MS. HYNES: That is the second point. I am making the point that the fact that the documents your Honor may have before you incriminate his clients is not a basis for not turning them over. They are corporate documents.

Secondly, with respect to conversations of Mr. Fried where he may have, to use Mr. Arkin's term, been a party to councils of defense, Mr. Friend is an attorney, he has been told by the United States Attorney's Office that we are not interested in any of those conversations, that we will not ask him about them. We have not asked him about them and we are not interested in hearing about them. And Mr. Friend is very much in a position to protect that situation and it really is not before your Honor in a real sense because Mr. Friend is a sophisticated attorney and knows very well what councils of defense might be if there are such.

Now, basically, the point that I would like to raise for your Honor is that your Honor has a very limited issue before you today and that is whether Mr. Friend may have the benefit of the documents that he says are exculpatory in nature.

The grand jury has specifically requested Mr. Friend to produce documents which in his view would tend to exculpate him. He has testified at length in the grand jury and has referred to documents from time to time and has stated that he has not been able to produce them because of the attorney-client privilege, and I think that Mr. Glendon is quite correct on the law and it is the Government's view that the law permits Mr. Friend to produce these documents before the grand jury.

Now getting to the ramifications of producing these documents is really not before your Honor. It is not a ripe issue for litigation. If it comes up at a later time it should be litigaged fully before the Court who has the issue before it.

The issue before your Honor is very limited.

Can these documents be turned over by Sol Friend to the grand jury? That is the only issue before your Honor, and really the corporation is starting to ask for advisory opinions of the Court as to the effect of turning over the documents which is really not before your Honor in any way that could be intelligently litigated.

We have not reached that point yet.

THE COURT: Yes, I understand.

A 8680

All right.

Now, is it Miss or Mrs. Dace

MS. DACEY: Ms. Dacey.

THE COURT: I am sorry.

Do you want to put anything in writing?

MS. DACEY: Not unless your Honor requests it.

THE COURT: I am a compulsive reader. Everything I get, I read.

MR. ARKIN: Your Honor, I don't think there is any need for us to brief this. Our position really is --

THE COURT: I understand your position. I don't want to foreclose you from anything you want to do.

MR. ARKIN: We think these documents would be helpful to the grand jury and helpful to my client, the corporation, as a whole. We just want it to be understood that this does not operate somehow by some archaic and primitive rule as a waiver of any rights.

I want to clear the record a bit that my understanding of the law is very clear that a corporate officer, aside from the corporate agent, aside from whom he or she may work with, has a protection flowing from that relationship with respect to the corporation in consultation with that attorney for that corporation.

I don't think that has to be briefed but I did not

jp:mg

want to let it go unanswered.

I think there is no problem that these documents should go to the grand jury and there should be no waiver to anything else; that is all.

THE COURT: Ms. Hynes, did I do it right?

THE COURT: You did it right, your Honor.

THE COURT: Anything you want to put in?

MS. HYNES: No, your Honor.

THE COURT: I have got your positions.

All right. I am not going to decide it right now.

MR. CLENDON: We appreciate your Honor's taking the time to hear us.

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A 8682

EXHIBIT B

A 8683

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE APPLICATION :

OF : MEMORANDUM AND ORDER

SOLOMON H. FRIEND : M-11-188

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APPEARANCES:

HONORABLE PAUL J. CURRAN
United States Attorney
Attorney for the Government
By: Patricia M. Hynes, Esq.
Asst. United States Attorney
Of Counsel

JOAN DACEY, ESQ.
Attorney for Amrep Corporation

WILLIAM R. GLENDON, ESQ.
GUY C. QUINLAN, ESQ.
Attorneys for Movant-Applicant

STANLEY ARKIN, ESQ.
Attorney for Certain Officers of
Amrep Corporation

KEVIN THOMAS DUFFY, D.J.

Solomon H. Friend, an attorney, has applied for leave to turn over certain documents to a United States Grand Jury which is apparently investigating both his client Amrep Corporation and Mr. Friend himself. Mr. Friend has testified a number of times before the Grand Jury and has been invited by the Assistant United States Attorney in charge of the case to produce any documents which Mr. Friend believes would exculpate him. Mr. Friend alleges that the documents which are the subject of this application would help to establish that he acted in a good faith effort to insure Amrep's compliance with the law and that consequently he should not be indicted.

The documents are divided into the following four categories:

(1) those as to which the corporation asserts an attorney-client privilege; (2) those already held to be privileged by other judges; (3) those as to which no privilege is asserted which have not yet been submitted to the Grand Jury; and (4) those as to which no privilege has been asserted and which have already been turned over to the Grand Jury.

As to those documents falling into categories (3) and (4) there is apparently no dispute. Accordingly, Mr. Friend may turn them over to the Grand Jury.

As to those documents within categories (1) and (2) the corporation, Amrep, asserts its attorney-client privilege since the government is unwilling to stipulate that the failure to assert the privilege would not constitute a waiver of the privilege as to matters and documents not presented in this application.

The government and Mr. Friend contend that, pursuant to the Code of Professional Responsibility, Disciplinary Rule 4-101(C),*/ Mr. Friend is entitled to turn over the documents to the Grand Jury. See *Meyerhofer* v. *Empire Fire and Marine Insurance Co.*, 497 F.2d 1190 (2d Cir. 1974). I agree. Accordingly, Mr. Friend may turn over those documents falling into categories (1) and (2).

I note, however, the continuing assertion by the corporation of its attorney-client privilege with respect to these documents.

SO ORDERED.

U. S. D. J.

Dated: New York, New York
October 15, 1975

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*/ DR4-101(C)(4) provides in pertinent part:

> "(C) A lawyer may reveal:
>
> (4) Confidences or secrets necessary . . . to defend himself or his employees or associates against an accusation of wrongful conduct."

Although, as yet, no formal accusation has been made against Mr. Friend, it would be senseless to require the stigma of an indictment to attach prior to allowing Mr. Friend to invoke the exception of DR4-101(C)(4) in his own defense.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA :

vs. : 75 Cr. 1023 (CMM)

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - X

MEMORANDUM IN SUPPORT OF THE MOTION OF DEFENDANTS CARITY AND DANIEL FRIEDMAN TO DISMISS THE INDICTMENT BY REASON OF THE PROSECUTION'S SEIZURE OF PRIVILEGED INFORMATION DURING THE GRAND JURY PROCEEDING, AND FOR OTHER RELIEF

Chester Carity and Daniel Friedman respectfully submit this memorandum in support of their motion to dismiss the indictment by reason of the prosecution's knowing violation of their attorney-client privilege during the grand jury investigation which resulted in this indictment. This motion is based upon the grounds that (a) the prosecution's conduct in deliberately violating the privilege amounted to misconduct sufficient to require the sanction of dismissal, and (b) the prosecution's conduct deprived the defendants of their Fifth Amendment right to due process of law in connection with their indictment, and of their Sixth Amendment right to counsel during the grand jury investigation.

Carity and Friedman further submit this memorandum in support of their alternative motions (a) to suppress as evidence all information and materials obtained by the prosecution in violation of the attorney-client privilege, and (b) to sever their trial from the trial of the defendant Solomon H. Friend, inside corporate counsel for AMREP and the defendants since 1970.

A. The Relevant Facts

The defendant Friend, an attorney, has been employed as inside general counsel to AMREP since 1970. There can be no dispute that since that time he has been intimately involved in the business of AMREP, including the development of Rio Rancho Estates, has been constantly called upon to give legal advice concerning the policy and operations of AMREP, including the development of Rio Rancho Estates, and has both given and received communications and information which were confidential by reason of the attorney-client relationship which existed between Friend, as counsel, and AMREP and Carity and Daniel Friedman, as executives of AMREP.

It also cannot be disputed that Friend, since the beginning of the grand jury investigation in or about March 1974, was actively involved in decisions having to do with the defense of AMREP, Carity, and Daniel

Friedman against indictment. Indeed, and of special relevance, it cannot be disputed that Friend -- as the prosecution knew -- functioned as defense counsel in this fashion for some 8 months (March 1974 - January 1975) before Friend was advised that he was himself a target of the grand jury investigation.

It is obvious that Friend was privy to confidential and privileged communications both in his capacity as corporate counsel up to the commencement of the grand jury investigation in March 1974, and thereafter also as defense counsel until January 1975, when the prosecution first advised Friend that he was a target. The prosecution knew this, and therefore necessarily knew that any questioning of Friend before the grand jury, or elsewhere, could well intrude upon communications and other matters which were privileged and which were not subject to disclosure without violating the attorney-client privilege and the defendants' right to the effective assistance of counsel in defending against the very indictment the prosecution was seeking.

Nonetheless, beginning on or about January 28, 1975, Friend was summoned, appeared, and thereafter testified before the grand jury on 11 separate occasions.

His testimony covers in excess of 1,250 pages of transcript, a substantial part of which deals with questions and answers bearing directly upon privileged communications to which Friend was privy, either as inside corporate counsel or as a member of the team of defense counsel representing AMREP and its various executives during the grand jury investigation. Despite Friend's reference to the prohibitions of the privilege, and to his position as both corporate and as defense counsel, the Assistant engaged in exhaustive inquiry into privileged matters. Friend, caught between the prosecutor's expressed threat of indictment and his own obligation as an attorney, violated the privilege on any number of occasions, albeit reluctantly.

During his earlier appearances before the grand jury, Friend, while refusing to produce privileged documents of pre-investigation vintage, violated the privilege by refreshing his recollection from those documents and testifying fully and completely as to their substance based upon a recollection refreshed in this manner. The Assistant was aware of this, could not have been ignorant of the violation of the privilege which it represented, and knew that the procedure and resulting violation had not been approved or consented to by AMREP, Carity or Daniel Friedman.

In addition, on various occasions Friend testified to information obtained as a member of post-investigation team of defense counsel.

Finally, Friend produced the aforementioned privileged documents themselves in circumstances which can only be characterized as coercive and improper on the part of the prosecution. On September 11, 1975, during his eighth appearance before the grand jury, the Assistant virtually ordered Friend to produce the documents or face indictment (Tr. 9-11-75, pp. 54-57). The essence of the Assistant's colloquy was clear: -- produce the privileged documents or be indicted.

Thereafter, and in direct response to this blatant prosecution threat, Friend appeared with counsel before the Honorable Kevin T. Duffy, United States District Judge, and requested permission to produce the documents. Friend's application, which is fully described in the affidavit of his counsel, William Glendon, Esq., submitted in support of Friend's motions in this case, was based essentially upon the right of an attorney to violate the privilege without waiver, if necessary to defend himself from prosecution. Judge Duffy granted Friend's application and the privileged documents were produced.

The position of the prosecution in connection with Friend's application to Judge Duffy is revealing. In essence, it supported Friend's application and, most significantly for the purposes of this motion, expressly told Judge Duffy that the question of injury to the other targets (Friend's clients) was not ripe for determination, was not relevant to Friend's application, and was not of concern to the prosecution itself. The Assistant stated (Hearing Tr. 8, 10/1/75):

> "Now getting to the ramifications of producing these documents is really not before your Honor. It is not a ripe issue for litigation. If it comes up at a later time it should be litigated fully before the Court who has the issue before it.
>
> The issue before your Honor is very limited.
>
> Can these documents be turned over by Sol Friend to the grand jury? That is the only issue before your Honor, and really the corporation is starting to ask for advisory opinions of the Court as to the effect of turning over the documents which is really not before your Honor in any way that could be intelligently litigated."

Clearly, the prosecutor fully appreciated that production of privileged documents would constitute a serious breach of the attorney-client privilege, but wanted access to the documents, no matter what the consequences.

On October 21, 1975, Friend testified extensively concerning those documents. The lengthy eighty count indictment was filed one week later on October 28, 1975, a fact which does more than suggest that the prosecutor never seriously considered not indicting Friend. Thus, from all that appears, the prosecutor's "request" that Friend produce the documents or face indictment seems to have been nothing more than a gambit to obtain the documents, privilege be damned.

POINT I

THE PROSECUTOR'S MISCONDUCT IN PRESENTING PRIVILEGED MATTER TO THE GRAND JURY REQUIRES DISMISSAL OF THE INDICTMENT

The claim of attorney-client privilege in this matter is governed by the new Federal Rules of Evidence which were effective on July 1, 1975. Public Law 93-595, 88 Stat. 1926-1949. Rule 501 of the Federal Rules of Evidence provides, in part:

> ". . . the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience."

The rule is intended to incorporate the attorney-client privilege as developed by the courts of the United States prior to its adoption. *See* House Judiciary Committee

Report, 93-650. It has, of course, been well-established that communications between an attorney and a client are privileged and not subject to disclosure without the consent of the client. See, e.g., Hunt v. Blackburn, 128 U.S. 464 (1888).

We believe the government will concede the existence of the privilege between Friend and AMREP. Moreover, we believe it is clear that the communications between Friend and the individual defendants also are clearly protected by the corporation's privilege.

In City of Philadelphia v. Westinghouse Electric Corp., 210 F. Supp. 483 (E.D. Pa. 1962), a claim of attorney-client privilege was asserted with respect to conversations between a corporation's employee and its counsel relating to a pending indictment of the corporation. In deciding the existence of a privilege with regard to these communications, the Court held, 210 F. Supp. at 485:

> "Keeping in mind that the question is, Is it the corporation which is seeking the lawyer's advice when the asserted privileged communication is made?, the most satisfactory solution, I think, is that if the employee making the communication, of whatever rank he may be, is in a position to control or even to take a substantial part in a decision about any action which the corporation may take upon

> the advice of the attorney, or is he an authorized member of a body or group which has that authority, then, in effect, he is (or personifies) the corporation when he makes his disclosure to the lawyer and the privilege would apply."

Without question, Carity and Daniel Friedman were persons "in a position to control or even to take a substantial part in a decision about any action" which AMREP might take upon the advice of counsel, as indeed is apparent on the face of the indictment itself. See also, Harper & Row Publishers, Inc. v. Decker, 423 F.2d 487 (7th Cir. 1970), aff'd by an equally divided court, 400 U.S. 348 (1971); In re Grand Jury Proceedings, Duffy v. United States, 473 F.2d 840 (8th Cir. 1973); and United States v. United Shoe Machinery Corp., supra.

There is no doubt that the privilege was violated during the grand jury investigation. The only remaining issue is the remedy which, in these circumstances, necessarily must be the dismissal of the indictment.

A. Dismissal for Misconduct

There is no doubt that a prosecutor's misconduct before a grand jury, in and of itself, is grounds for dismissal of an indictment. See, e.g., United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972); United States v. Tane, 329 F.2d 848 (2d Cir. 1964); United States v. Pepe, 367 F.

Supp. 1365 (D. Conn. 1973). This is true even if the misconduct does not reach constitutional dimensions.*

In United States v. Estepa, supra, our Court of Appeals ordered an indictment dismissed because of the deliberate and misleading presentation of hearsay evidence to the grand jury. Although that Court had previously ruled that the use of hearsay, in and of itself, was not a grounds for dismissing an indictment, it had condemned the practice for its tendency to pervert the historical functions of the grand jury. See United States v. Umans, 368 F.2d 725 (2d Cir. 1966), cert. dismissed as improvidently granted, 398 U.S. 80 (1967), where the Court of Appeals observed, 368 F.2d at 730:

> "While we are not condemning the procedure used here before the grand jury, we think it is not amiss for us to state that excessive use of hearsay in the presentation of government cases to grand juries tends to destroy the historical function of grand juries in assessing the likelihood of prosecutiorial success and tends to destroy the protection from unwarranted prosecution that grand juries are supposed to afford to the innocent."

It was the prosecution's violation of the warning issued in the Umans case which led to the dismissal of the Estepa indictment.

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*We believe however that the misconduct in this case also requires dismissal on constitutional grounds.

The policy considerations expressed in Umans are substantially greater where the evidence presented to the grand jury would not only be inadmissible at trial but also has been obtained in violation both of the attorney-client privilege and of an individual's Sixth Amendment right to the effective assistance of counsel.

In United States v. Mackey, (E.D.N.Y. Nov. 14, 1975 Slip. Op.), the issue of prosecutorial misconduct in presenting privileged matter to the grand jury was fully discussed. There however defendant's attorney revealed "very little, if anything, that would qualify as a confidential communication" and, on that basis, Judge Weinstein held that the violation of the attorney-client privilege was slight, at best, and therefore did not meaningfully prejudice the defendant.

Judge Weinstein however did confirm the power of the Court to dismiss an indictment where the prosecution intruded upon protected relationships in a grand jury proceeding. Id., Slip. Op. p. 31:

> "The preservation of the testimonial privileges in grand jury proceedings also serves to prevent governmental interferences with the protected relationships. An attorney or spouse, for instance, is very often a fertile source of incriminatory information. Without the Rule [Rule 1101 of the Federal Rules of Evidence] a privileged communicant called as a witness would face the problem of

> choosing between disclosing confidential matter, testifying falsely, and possibly incurring contempt by remaining silent. It is at least arguable that the risk of dismissal of any resulting indictment is the only effective means of discouraging zealous prosecutors from improperly seeking privileged matter for a grand jury's violation of Rules 1101(c) and (d). If valid, such an hypothesis would directly support the exercise of the Court's supervisory power."

Judge Weinstein then reviewed the Second Circuit decisions dealing with the presentation of hearsay evidence to the grand jury and concluded, *Id.* Slip. Op. p. 34:

> "The upshot of these decisions is that just as a court may exercise its supervisory powers to enforce the standards of prosecutorial conduct implicit in the Fifth Amendment grand jury guarantee, so too the court may exercise those powers to enforce the standards of prosecutorial conduct contemplated by Rules 1101(c) and (d) of the Federal Rules of Evidence. But, in determining whether to quash a facially valid indictment, the court must weigh the added deterent effect a dismissal against the substantial countervailing considerations articulated by the Supreme Court in *Costello v. United States*, 350 U.S. 359 (1950). Such an assessment turns, for the most part, on the deliberateness of the government's conduct, the egregiousness of the violation, and the extent to which the defendant has been prejudiced."

See also, *United States* v. *Pepe*, *supra*, and *United States* v. *Lawn*, 115 F. Supp. 674 (S.D.N.Y. 1953).

Judge Weinstein's criteria for dismissal clearly are satisfied in the instant case. The evidence firmly establishes that the prosecutor's conduct was deliberate. Indeed, the Assistant made it clear to Judge Duffy that the prosecution wanted the privileged documents regardless of the consequences.

The violation was egregious. The information seized was not "very little, if anything," as in the Mackey case. It encompassed numerous documents, testimony as to pre-investigation consultations and advice, and information as to the activity of defense counsel during the investigation.

The resulting prejudice is clear and substantial. Much of the indictment almost literally tracks Friend's disclosures and the material seized was substantial. Moreover, the repeated search for privileged information produced repeated assertions by Friend of his clients' refusal to waive the privilege. This in itself was prejudicial since, to a lay grand jury, the appearance could only have been one of obstruction and fear of disclosure. Finally, the repeated intrusion into the councils of the defense disclosed information with regard to tactics and preparation, e.g., the debriefing of various witnesses after their grand jury testimony, which might also have prejudiced the grand jury, and which surely is of present value to the prosecution in preparing for trial.

It is difficult to conceive of a more deliberate, thorough, and far-reaching invasion of a defendant's privileges. The indictment must be dismissed for this reason alone.

B. Due Process

The prosecution, relying upon Costello v. United States, 350 U.S. 359 (1950), may be expected to argue that an indictment, valid on its face, is not subject to dismissal. It may argue also that Costello is especially controlling where the challenge to the indictment is based upon the use of illegally seized evidence before the grand jury. See, e.g., United States v. Calandra, 414 U.S. 338 (1973); Lawn v. United States, 355 U.S. 339 (1958). Neither argument has merit.

First, the Costello case no longer supports a blanket immunity from dismissal. Whether as a matter of supervisory power, United States v. Estepa, supra, or constitutional due process, United States v. Basurto, 497 F.2d 781 (9th Cir. 1974), or a combination of both, United States v. DeMarco, 401 F. Supp. 503 (C.D. Cal. 1975), it is now clear that an indictment may be dismissed when the prosecutor or grand jury acts unlawfully, regardless of Costello.

The *Estepa* case has already been discussed. There, the Second Circuit exercised its supervisory power to dismiss an indictment when the United States Attorney failed to heed prior warnings that hearsay, if used in a grand jury, must be identified as such.

The *Basurto* case went further, and extended to the grand jury the same due process protections afforded a defendant at trial. In *Basurto*, a principal witness before the grand jury committed perjury and an indictment was returned. The prosecution thereafter learned of the perjury, but failed to reconvene or disclose the perjury to the grand jury. The defendant was convicted.

Relying by analogy upon *Giles* v. *Maryland*, 386 U.S. 66 (1967) and *Napue* v. *Illinois*, 360 U.S. 264 (1959) -- both of which require reversal where perjured testimony is knowingly used at trial -- the Ninth Circuit reversed the conviction and *dismissed* the indictment. While recognizing the continued validity of the *Costello* rule, the Court *inter alia* held that *Costello* was of no relevance when the Constitution is violated *during* the grand jury proceeding itself. The Ninth Circuit held, *Id.*, 497 at 785:

> "We hold that the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached."

In the *DeMarco* case, the court likewise dismissed an indictment upon a finding that the prosecution had failed to disclose possibly exculpatory evidence to the grand jury *during* the grand jury proceeding itself. As in the *Basurto* case, the court in *DeMarco* extended to the grand jury that same protection against such suppression as is a defendant's Constitutional right at trial under *Brady* v. *Maryland*. It held, 401 F. Supp. at 514:

> "Whether this duty be based upon the grand jury provisions of the fifth amendment or the due process clause of the fifth amendment, or on the exercise of this court's supervisory jursidiction, *Bursey* v. *United States*, 466 F.2d 1059 (9th Cir. 1972), it must be imposed."

Nor is the prosecution protected in the instant case by those decisions which have refused to dismiss indictments based in part upon illegally-seized evidence. The difference is that in *those* cases the illegality occurred outside of the grand jury proceeding and not -- as in the instant case -- as a part of the proceeding itself. The *Calandra* case, *supra*, involved evidence which had been seized in violation of the Fourth Amendment well before the grand proceeding began. The *Lawn* case, *supra*, involved evidence which had been seized in violation of the Fifth Amendment well before the grand jury proceeding began.

In short, both cases, and the cases like them, involved no illegality in the grand jury proceeding itself.

In the instant case, as in *Basurto* and *DeMarco*, the illegality was a part of the grand jury proceeding. It was the grand jury and the prosecution which seized the evidence in this case. *Calandra*, *Lawn*, and other like cases, are inapposite. And clearly *Costello* does not control.

The Supreme Court made precisely this distinction in the *Calandra* case itself. While holding that a grand jury could consider evidence which had been illegally seized outside of its proceeding, the Court quite specifically held also that a grand jury may not *itself* violate the law with impunity. The Court said, 414 U.S. at 346:

> "Of course, the grand jury's subpoena power is not unlimited. It may consider incompetent evidence, *but it may not itself violate a valid privilege*, whether established by the Constitution, statutes, or the common law. Although, for example, an indictment based on evidence obtained in violation of a defendant's Fifth Amendment privilege is nevertheless valid, the grand jury may not force a witness to answer questions in violation of that constitutional guarantee. Rather, the grand jury may override a Fifth Amendment claim only if the witness is granted immunity co-extensive with the privilege against self-incrimination."

Calandra therefore clearly requires dismissal of the instant indictment. The grand jury in this case, guided by the prosecution, clearly did "itself violate a valid privilege" established by the common law. Friend's testimony was seized by the grand jury itself and not by some enforcement agency at some prior time. Just as the grand jury "may not force a witness to answer questions in violation of that [Fifth Amendment] guarantee," so too a grand jury may not force a witness, Friend, to answer questions in violation of the common law privilege involved in this case.

Nor may the prosecution claim that Friend's testimony was not compelled. In effect Friend was told to testify or be indicted. There can be no question that such a procedure could not be excused were it employed to induce a waiver of the Fifth Amendment right to silence. There can be no difference in result where such a threat is employed to induce disclosure of information which the prosecution knows is privileged at common law.

This conclusion also is enforced by Rule 1101(d) of the new Rules of Federal Evidence, which became effective on July 1, 1975, before 10 of Friend's 11 appearances, and before the prosecution's September 11 threat that Friend, in effect, "should produce or else." Rule 1101(d) provides specifically that the rules "with respect to privileges" are applicable to grand jury proceedings. Thus, while Rule 1101(d) specifically provides that no other of the new Rules shall apply to grand jury proceedings, it specifically and expressly states that the Rules "with respect to privileges" shall be enforced even in grand jury proceedings. But the rules "with respect to privileges" were not enforced in this grand jury proceeding. Instead they were violated. The fault was the prosecution's, which must now suffer the consequences. As Judge Weinstein, an acknowledged authority on the new Rules, held in the Mackey case, Slip Op. p. 36:

> "To comply with the policy of Rule 1101 the United States Attorney should not knowingly violate a privilege before the grand jury. He should be sensitive to possible problems. If there is any substantial possibility of a valid claim of privilege he should bring this fact to the attention of the witness, advising the witness of the right to consult counsel; to have the court appoint a lawyer if he cannot afford one; to refuse to answer questions if he believes a privilege may be involved; and to be brought before the court for a ruling."

The prosecution's conduct in this case cannot be condoned. It did not respect the ancient privilege; it ravaged it. Its illegal seizure occurred as a part of the grand jury proceeding itself, does violence to any concept of due process, and requires dismissal.

C. Sixth Amendment

It is clear from what has been said above that the prosecution, at the time when it interrogated Friend before the grand jury, was fully aware that Friend had been corporate counsel for AMREP during the time period encompassed by the government's investigation, and also was actually assisting and participating in the preparation of a defense with other counsel in connection with that grand jury investigation. Friend, on several occasions, specifically advised the prosecutor that he had discussed defense strategy with other counsel for the defendants and had attended sessions at which grand jury witnesses were debriefed. (See e.g., Friend Tr., 7-24-75, pp. 3-6). He also stated that it was difficult for him to differentiate between what he had learned as a result of such conferences and what he had learned earlier in his capacity as AMREP's corporate counsel. Nevertheless, the prosecutor continued to press for Friend's testimony employing the not too subtle suggestion that if that testimony was not forthcoming the grand jury might have no alternative but to indict Friend. (See e.g., Id., 9-11-75, pp. 54-57). And while nominally disclaiming any interest in meetings with other counsel and conversations relating thereto, the prosecutor nonetheless elicited information as to facts which Friend had acquired at such meetings. (Id., 9-9-75, pp. 22-25).

The facts of this case therefore present a situation where the prosecution, with a full awareness that it was acting at its peril, deliberately chose to intrude into privileged information acquired by Friend as a participant in the councils of the defense. Furthermore, its inquiry related directly to the matters then being investigated by the grand jury and not to any collateral areas of grand jury investigation. Under such circumstances, where the intrusion was egregious, direct, and deliberate, dismissal is required and no prejudice need be shown. *United States* v. *Gartner*, 518 F.2d 633 (2d Cir. 1975); *United States* v. *Rosner*, 485 F.2d, at 1128 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974).*

This unconstitutional intrusion requires dismissal regardless of prejudice. And there was prejudice in any event. The indictment must be dismissed.

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*In deciding what remedy is available for interference by the prosecution with an attorney-client relationship, some circuits have taken the view that there is a "per se" rule requiring dismissal unless the prosecution can demonstrate that a defendant had not been prejudiced by the prosecution's conduct beyond a reasonable doubt. [*See United States* v. *Rispo*, 460 F.2d 965 (3d Cir. 1972)]. The Second Circuit has taken a more moderate approach, *i.e.*, it has held that dismissal should occur only if warranted by the circumstances of the case. In view of the facts as set forth above, under either standard, the indictment in this case must be dismissed.

* * *

In the end, at least two decisions in this District lay to rest any question as to whether the prosecutor's unauthorized intrusions into privileged matters constituted a Constitutional violation requiring dismissal. United States v. Mitchell, 372 F. Supp. 1239, 1245 (S.D.N.Y. 1973: In re Terkeltoub, 256 F. Supp, 683 (S.D.N.Y. 1966).

In the Terkeltoub case, the prosecution sought to compel an attorney to testify before the grand jury concerning a meeting between the attorney, his client, and a third party. The meeting was held in preparation of the client's case for trial. In deciding that an attorney's testimony could not be compelled, Judge Frankel found that "The prosecutor's secret intrusion (into this area) offends both the Fifth and Sixth Amendments. 256 F. Supp, 685. What is particularly persuasive about Judge Frankel's determination is that it had to do, not with the violation of the attorney-client privilege, but simply with an attempted intrusion into a lawyer's work product. A fortiori, a prosecutor's intrusion which includes work product, but goes beyond that to the very attorney-client privilege itself, clearly violates a defendant's constitutional right to due process of law and to the effective assistance of counsel as guaranteed by the Fifth and Sixth Amendments.

In the Mitchell case, Judge Gagliardi found that a prosecutor's actual intrusion into an attorney's work product constituted a violation of the client's Fifth and Sixth Amendment rights. 372 F. Supp. at 1246. The intrusion in the Mitchell case occurred during the grand jury proceeding itself, as here. Moreover, and of a special relevance to the instant case, Judge Gagliardi refused to dismiss the indictment only because the attorney's testimony as to work product was taken before a grand jury other than the indicting grand jury, so that in Judge Gagliardi's words: -- "By an accident of fate Parkinson's testimony never reached the ears of the indicting Grand Jury." For this reason -- and for this reason only -- Judge Gagliardi refused to find that the indictment was "tainted" and therefore refused to order its dismissal despite what he found to be: -- "The Government's unfortunate and ill-advised excursion into the realm of the work product rule ***". 372 F. Supp. at 1246.

It follows that the indictment in this case must be dismissed for constitutional reasons. The prosecution invaded areas protected by the privilege itself, as well as areas of work product. The prosecution even went so far as to intrude upon the very councils of the defense attorneys retained to defend AMREP and its executives against indictment. Nor did the prosecution take any steps to prevent "taint" by extracting the privileged information before a grand jury other than the indicting grand jury, as in the

Mitchell case. That option was ignored, and the [illegible]icting grand jury received evidence to which it was not entitled. Under all of the authorities set forth above, this indictment must be dismissed by reason of the deliberate and egregious prosecutorial violation of the defendants' Fifth and Sixth Amendment rights.

POINT II

THE EVIDENCE OBTAINED IN VIOLATION OF THE DEFENDANTS' RIGHTS AND LEADS DERIVED THEREFROM MUST BE SUPPRESSED

If the Court does not dismiss the indictment in its entirety, the defendants alternatively move for the suppression of all evidence obtained by the prosecution in violation of the defendants' rights and all leads therefrom. Obviously, an attorney who testifies without his client's consent in violation of the client's attorney-client privilege, does not effect a waiver of the privilege on behalf of this client. United States v. Mitchell, 372 F. Supp. 1239 (S.D.N.Y. 1973).

The defendants, of course, have an unqualified right to prevent any further disclosure of the privileged communications previously disclosed to the grand jury. United States v. Mitchell, supra. Therefore, all evidence obtained in violation of the attorney-client privilege and leads derived therefrom must be suppressed.

POINT III

THE DEFENDANTS FURTHER MOVE FOR THE SEVERANCE OF DEFENDANT FRIEND ON THE GROUNDS OF PREJUDICIAL JOINDER

The defendants further move for a severance of the defendant Friend pursuant to Rule 14 of the Federal Rules of Criminal Procedure. Essentially, this motion is based upon the ruling of Judge Duffy, Exhibit A to Fleming Affidavit, wherein he found that an attorney may disclose privileged communications in defending himself against charges of wrongdoing pursuant to the Disciplinary Rules of the American Bar Association. The defendants anticipate that this Court will, in all likelihood, similarly rule that the defendant Friend has an absolute and unqualified right to present testimony in his own defense which is otherwise protected by the defendants' attorney-client privilege. It is submitted that the defendants also have an unqualified right to prevent disclosure of privileged communications, and the only rational means of accommodating the rights of all defendants in this matter is a severance of Friend on the grounds of prejudicial joinder. Clearly, the rights of both classes of defendants (the attorney on one hand and his clients on the other) cannot be accommodated at a single trial.

We recognize that, at his own trial, the defendant Friend may defend himself through the presentation of his version of privileged communications, as he did in the grand jury. Although the defendants' rights to protect against disclosure of privilege communications would obviously be abridged by such disclosure, at least, the disclosure would not operate to their detriment, as would be the case with disclosure of privileged communications at a single trial.

CONCLUSION

The indictment should be dismissed. Alternatively, evidence obtained in violation of the defendants' Fifth and Sixth Amendment rights should be suppressed and the trial of the defendant Friend severed from the trial of the other defendants.

Dated: January 23, 1976
New York, New York

Respectfully submitted,

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Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA :

- v - : 75 Cr. 1023 (CMM)

AMREP CORPORATION, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - X

CARITY AND DANIEL FRIEDMAN REPLY MEMORANDUM IN SUPPORT OF THEIR MOTIONS TO DISMISS AND SEVER

The defendants Chester Carity and Daniel Friedman respectfully submit this reply memorandum in support of their motions in this case.

A 8714

POINT I

REPLY TO THE PROSECUTOR'S ARGUMENT THAT THE INDICTMENT CHARGES AN OFFENSE (GOV'T MEMO. I)

The prosecution completely misses the point in responding to our argument that the indictment fails to state an offense. The prosecution continues to insist that pleading sufficiency as to mail fraud is satisfied by allegations of material omissions alone. This is incorrect. We do not deny that a mail fraud indictment may be based upon material omissions in part. But, a mail fraud indictment may not be based upon material omissions alone. The point is that fraud under the mail fraud statute is pleaded sufficiently only where the indictment contains (a) allegations of materially false statements, or, (b) allegations of material statements which are only half-true in the sense that other statements or declarations are lacking which are necessary to make the statements which are made not misleading.

In short, the prosecution misses our essential point that omissions form the basis for a mail fraud indictment only if statements are alleged which are half-true in the sense described above. As we noted in our original memorandum in support of the motion to dismiss:

> "The present indictment lists many statements allegedly made at the direction of the defendants. These statements are true statements however, and the indictment does not charge otherwise. In addition, the statements imply nothing other than what they say. And the indictment fails even to suggest any respect in which the statements are false or only half-true." (Orig. Memo. 6, Emphasis Added).

While we have been unable to read all of the many cases cited in the prosecution's memorandum, we are confident that each of them -- insofar as they rely upon material omissions as evidencing fraud -- premise that reliance upon the existence of actual declarations which properly could be characterized as half-truths and which had been alleged as such.

POINT II

REPLYING TO THE PROSECUTION ON THE QUESTION OF VIOLATION OF THE ATTORNEY-CLIENT PRIVILEGE AND THE NEED FOR DISMISSAL AND SEVERANCE (GOV'T MEMO. VI)

We have urged that the indictment must be dismissed by reason of the prosecution's intentional and unauthorized intrusion into matters protected by the attorney-client privilege, the work-product privilege, and the recognized confidentiality of the councils of the defense. The prosecution characterizes our motion as "frivolous" and without "merit" but curiously enough requires 55 pages to urge its denial. And those 55 pages never really focus on the very real issues which have been raised.

The prosecution scatters various arguments throughout its lengthy opposition, namely:

(a) That any intrusion was "inconsequential" and "trivial" (G.M., p. 59).*

(b) That decision should be reserved until the trial when the evidence in question is offered (BM., p. 59).

(c) That the defendants have failed to establish either the privilege or its breach (GM. pp. 60-70).

(d) That defendants lack standing to challenge the illegality and to demand any remedy (GM., pp. 70-74).

---

*References "GM" are to the prosecutor's memorandum.

(e) That there has been no prejudice (GM. p. 77).

(f) That the prosecution had "no choice" but to violate the privilege (GM., p. 80).

(g) That the privilege was waived (GM., pp. 80-81).

(h) That the privilege will be defeated by the "crime" exception in any event (GM., pp. 84, 98-99).

(i) That "once [privileged] communications are disclosed for that purpose [lawyer's self-defense] the privilege has been legitimately broken and the information can no longer be confidential as to anyone" (GM., pp. 82-83).

This last claim is especially staggering. It states in essence that the privilege is destroyed once a lawyer is targeted for indictment and, in his own defense, breaches a privilege which in fact belongs to others also under investigation. The argument must be frivolous. Its acceptance would free the prosecution to breach a valued privilege in any investigation where counsel's advice might be material and indeed would encourage the indictment of the attorney in order to justify the illegal intrusion. Further, both the prosecution and Judge Duffy fully understood that Fri[illegible]'s conduct could have no effect on the rights of third parties. The prosecution specifically told Judge Duffy that the rights of third parties were irrelevant to the issue before Judge Duffy and should be left for a later time (J. Duffy Tr. pp. 7-8; Exh. A, Fleming Affidavit, 1/23/76).

Nor can the prosecution claim that it had "no other choice" but to breach the privilege once Friend claimed that privileged matters would exonerate him. It could have allowed the grand jury to measure Friend's involvement without regard to privileged evidence. And, if it felt this was unfair to Friend, it could have presented Friend's case to another grand jury and thereby avoided any prejudice to those other targets to whom the privilege belonged. This indeed is precisely what was done in United States v. Mitchell, 372 F. Supp. 1239 (S.D.N.Y. 1973), and is precisely what saved the Mitchell-Stans indictment from dismissal. 372 F. Supp. at 1246. To argue that this would have been inconvenient would place convenience above valued rights, a priority not entirely consistent with ordinary notions of justice and accepted concepts of prosecutorial responsibility.

The only fair inference is that the prosecution did not care about the rights of the other targets, or even about Friend's. Instead it seems apparent that the prosecution used Friend to obtain evidence which another Judge in this Court already had held to be privileged and unobtainable. And if inadvertence is the claim, then an insensitivity to individual rights is demonstrated which in itself provides sufficient basis for the remedies requested.

Further, a reading of Friend's grand jury transcript and of the documents in question will demonstrate that the intrusion was anything but "trivial." And in the face of a record which demonstrates a conscious decision to invade and breach the privilege regardless of the consequences, (J. Duffy Tr., pp. 7-8), it is hard to believe that the degree of intrusion is relevant in any event. See, e.g., United States v. Polisi, 416 F.2d 573 (2d Cir. 1969):- when suppression of evidence is conscious and deliberate, the questions of prejudice is not reached. The meaning of Polisi is clear and relevant:- when the prosecution is merely careless, sanctions may be inappropriate. But where the misconduct is deliberate, it must be stopped. See also United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972).

There has been prejudice in any event. The grand jury received evidence to which it was not entitled. And at this date no one can measure its impact on the grand jury's ultimate determination. At least as significantly, the defendants have been prejudiced in their defense of an indictment which now has been returned. First, evidence has been seized illegally. Second, the intrusions into the councils of the defense has enlightened the prosecution with regard to that defense. The prosecution has learned, for example, what it had no right to know, to wit, that defense counsel debriefed various witnesses who appeared before the grand jury. A case which the prosecution cites makes the point. United States v. Rosner, 485 F.2d 1283 (2d Cir. 1973). There Judge Friendly stated, Id., 485 F.2d at 1227:

> "The constitutional barrier is raised when it is the government that unlawfully intrudes in legal strategy conferences ***."

Precisely that happened here. The proseuction unlawfully intruded on "legal strategy conferences" when it questioned Friend on precisely such matters in the grand jury. (See, e.g., Friend Tr. 9/9/75, pp. 22-25).

It likewise is frivolous to suggest that decision should be delayed until the trial when the evidence is offered. This old prosecution saw makes no sense in this case, where four months of trial are anticipated, first, because this approach would immeasurably delay an already protracted trial, and, second, because a mistrial almost surely will be required when Friend testifies in his own defense late into the four months trial. Moreover, the suggested delay in decision overlooks the truly appropriate remedy for the illegality involved, namely, dismissal of this indictment.

Nor can it be claimed that the privilege has not been established. The prosecution admits that at least a general corporate privilege exists, and our prior papers establish its existence with regard to the evidence in question by clear and competent proof which includes references to Friend's grand jury transcript, the disclosure of documents previously held privileged by another Judge in this Court (Glendin Affdvt. 9/30/75, J. Duffy Hearing), and the transcript of Judge Duffy's hearing as a whole. Moreover, the prosecution's failure to challenge Friend's assertion of the privilege when made before the grand jury tacitly admits the same. The prosecution's argument that it mixed privileged and unprivileged documents after Judge Duffy's ruling (GM., p. 81) is specious. If the documents were mixed up by the prosecutors, they should now unmix them.

Judge Duffy's transcript also establishes the existence of the privilege, and the prosecution's awareness thereof. Judge Duffy himself recognized the assertion of the privilege (Fleming Affdvt., 1/26/76, Exh. B, p. 3), and proceeded to allow Friend to breach the privilege only after the prosecution told Judge Duffy that the rights of third parties other than Friend should be determined at a later date (J. Duffy Tr. pp. 7-8).

There likewise is no substance to the argument that the individual officer-defendants lack standing to challenge the illegality. In related areas of privacy, it clearly is established that the victim of illegality has standing even where the illegality was not directed at him or her, so long as damage arises from the illegality. See, e.g., Jones v. United States, 362 U.S. 267 (1960); Alderman v. United States, 394 U.S. 165 (1969). In Jones, the Supreme Court held that a person claiming a possessory interest in contraband had standing to challenge an illegal search even though the premises searched were not his. In Alderman, the same court held that a participant in a phone call had standing to challenge an illegal wiretap even though the telephone was not his. See also Katz v. United States, 389 U.S. 347 (1967). In the instant case, the prosecution admits that at least AMREP, the corporation, had a privilege. AMREP has not waived that privilege, the officer-defendants are the victims of its breach, and their individual standing to challenge the illegality is clear.

Indeed, since the privilege arises at least in part because the officers were the corporation for the purpose of the communications, City of Philadelphia v. Westinghouse, 210 F. Supp. 483 (E.D. Pa. 1962), then it becomes even more inconceivable that those officer-defendants have no right to challenge this invasion of privacy. If the officer is the corporation for purposes of communicating with the attorney, necessarily he is the corporation for purposes of asserting both the privilege itself and claims for relief arising out of its breach. While the officer's privilege may be derivative of the corporation's, so long as that officer was acting as the corporation, the privilege is his.

Moreover, and in the absence of case authority in either direction, the policy of confidentiality which the privilege represents would surely seem to warrant standing without regard to any of these considerations. Certainly a corporate officer, when he speaks or communicates with corporate counsel about legal matters, has every right to expect confidentiality. Otherwise, the purpose of the privilege -- candor -- would be thwarted.

Finally, the cases cited by the prosecution on the "standing" issue involve situations where the corporation was not a party or had not asserted or in fact had waived the privilege, or some combination thereof. Here AMREP is a defendant, has not waived its privilege, and continues to assert it.

Nor has there been a waiver by the officer-defendants. Certainly Mr. Arkin did not do so before Judge Duffy. At most, Mr. Arkin offered what Ms. Dacey offered, namely, to consent to Friend's production of the privileged documents and testimony thereon so long as no waiver was inferred. The prosecution refused (J. Duffy Tr. pp. 7, 9-10). And Judge Duffy recognized this himself in his opinion (Op. p. 2, Exh. B, Fleming Affdvt.):

> "I note, however, the continuing assertions by the corporation of its attorney-client privilege with respect to these documents".

There also is no basis for the prosecution's claim that the "crime" exception to the privilege justifies its conduct. The claim is grounded in what the prosecution says it will prove _at trial_ (GM. p. 122), and therefore admits that the essential showing has not yet been made. Moreover, even a _prima facie_ case that "AMREP committed fraud" (Ibid) would not establish the "crime" exception, absent evidence that the communication in question was sought in furtherance of that crime. _See_, _e.g._, _Clark_ v. _United States_, 289 U.S. 1,15 (1933); 2 Weinstein, _Evidence_, par. 503.

Certain additional comments seem appropriate. It is nonsense that the Sixth Amendment right to counsel does not reach grand jury proceedings, as the prosecution contends (GM. p. 95). That right attaches to all stages of a criminal proceeding, of which the grand jury investigation is a part. Certainly if a target is entitled to legal advice upon arrest, that same right exists as the criminal process moves forward into the grand jury. And the prosecution's other scattered claims with regard to its invasion of the councils of defense are equally without merit. _See_, _e.g._, _United States_ v. _Nobles_, 422 U.S. 225 (1975); _In_ re Grand Jury Proceedings, 473 F.2d 840, 847 (8th Cir. 1973); Matter of Rosenbaum, 401 F. Supp. 807, 808 n.4 (S.D.N.Y. 1975).

* * * *

There is a privilege. Under threat of indictment Friend violated that privilege. The prosecution knew this, participated in the hearing where Friend was granted leave to do so, and specifically stated that the impact on third parties should be left for later determination. Alternative procedures were available which would have protected the third parties. They were ignored or carelessly went unperceived. The councils to the defense also were intentionally invaded. We submit that these conscious intrusions may not be ignored. For all the reasons stated in our original papers, we request the dismissal of this indictment. And, short of that, we suggest most respectfully that Friend must be severed from the trial of the other defendants if a mistrial late in a four month trial is to be avoided.

Dated: New York, New York
March 24, 1976

Respectfully submitted,

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

PETER FLEMING JR.
JOHN SPRIZZO
PETER BENNETT

Of Counsel

A 8726

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

UNITED STATES OF AMERICA, : 75 Cr. 1023 (CMM)

-against- : 74-0906

NOTICE OF MOTIONS

AMREP CORPORATION, *et al.*, :

Defendants. :

---x

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavits of Stanley S. Arkin, Esq., sworn to on January 22, 1976, Mark S. Arisohn, Esq., sworn to on January 22, 1976, and Edward B. Winslow, Esq., sworn to on January 22, 1976, the exhibits annexed to those affidavits, the memorandum of law submitted in support of these motions, the indictment in this case, and all prior proceedings, defendants Howard W. Friedman and Henry L. Hoffman will move this Court before the Honorable Charles M. Metzner, United States District Judge, Southern District of New York, at the Courthouse in Foley Square, New York, New York, on February 2, 1976, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for:

1. an order pursuant to Rule 12(b)(1) of the Federal Rules of Criminal Procedure and the Fifth Amendment

to the United States Constitution dismissing the indictment;

2. an inspection by this Court of the grand jury minutes pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure and an order pursuant to Rule 12(b)(1) of the Federal Rules of Criminal Procedure and the Fifth Amendment to the United States Constitution dismissing the indictment;

3. an order pursuant to Rules 7(c) and 12(b)(2) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the United States Constitution dismissing the indictment;

4. an order pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure striking surplusage from the indictment; and

5. such other and further relief as to the Court seems just and proper.

Dated: New York, New York
January 23, 1976.

Yours, etc.,

STANLEY S. ARKIN, P.C.
Attorneys for Defendants
Howard W. Friedman
Henry L. Hoffman
[illegible] Madison Avenue
New York, New York 10017

By
Stanley S. Arkin

TO: HONORABLE THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
One St. Andrews Plaza
New York, New York 10007

3. for an order dismissing the indictment pursuant to Rules 7(c) and 12(b)(2) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the United States Constitution upon the ground that the indictment is vague and fails to specifically apprise defendants of the particular conduct claimed to amount to a violation of law; and

4. for an order striking surplusage from the indictment pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure upon the ground that its inclusion in the indictment is highly prejudicial to defendants and may mislead the jury.

Respectfully submitted,

STANLEY S. ARKIN, p.c.
Attorneys for Defendants
Howard W. Friedman
Henry L. Hoffman
300 Madison Avenue
New York, New York 10017

STANLEY S. ARKIN
MARK S. ARISOHN
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

UNITED STATES OF AMERICA, : 75 Cr. 1023 (CMM)

-against- :

AMREP CORPORATION, *et al*., : MOTIONS

Defendants.:

--x

Defendants Howard W. Friedman and Henry L. Hoffman move:

1. for an order dismissing the indictment pursuant to Rule 12(b)(1) of the Federal Rules of Criminal Procedure and the Fifth Amendment to the United States Constitution upon the ground that prosecution of the indictment is barred by Due Process;

4

2. for an inspection by this Court of the grand jury minutes pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure upon the ground that there is substantial evidence that the prosecution misled the grand jury, and upon such determination, an order dismissing the indictment pursuant to Rules 12(b)(1) of the Federal Rules of Criminal Procedure and the Fifth Amendment to the United States Constitution.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

-against- : 75 Cr. 1023 (CMM)

AMREP Corporation, *et al.*, : Affidavit

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

STANLEY S. ARKIN, being sworn, says:

I am an attorney at law, and I represent Howard W. Friedman and Henry L. Hoffman, defendants in the above-entitled case. I submit this affidavit in support of defendants' motions:

1. to inspect the grand jury minutes and dismiss the indictment upon determination that the prosecution misled the grand jury;

2. to dismiss the indictment for vagueness; and

3. to strike inflammatory and irrelevant surplusage.

I. There are Substantial Indicia that the Prosecution Misled the Grand Jury.

The investigation which resulted in the instant indictment commenced in March, 1974. During the pendency of the investigation, the prosecutors interrogated numerous witnesses in the grand jury as well as in their offices. In addition, conferences were had between counsel and the

United States Attorney's office regarding the investigation. These conferences as well as the debriefings of the major portion of the grand jury witnesses provide strong evidence that the government was predisposed to indict my clients as well as the other defendants irrespective of the existence of exculpatory evidence or legal defenses.

Indeed, in a vain effort to persuade the government not to seek indictment, I prepared and submitted in August, 1975 a 79-page printed brief to Paul J. Curran--the then United States Attorney.

At the core of the Company's defense throughout the investigation as well as its potential defense on the trial is its contention that its advertising and other literature were reviewed and in effect approved by government agencies, in particular and most importantly, the Department of State of New York State.

As evidenced by the affidavit of my associate, Mark S. Arisohn, with respect to Leonard Geller, former sales director for the New York region and an immunized key witness for the government, the prosecution without reason refused to permit him to inform the grand jury of his or anybody else's belief that the representations in the Company's literature had been reviewed and approved.

On January 13, 1976, I interviewed an attorney with the Department of New York State at his offices at 270 Broadway, New York, New York. That attorney described to me an angry confrontation he had had with Mr. Hynes, the prosecutrix and Thomas Day Edwards, Chief of the Criminal Division, who had called him to their offices following receipt of the August brief. The attorney told me that he had disputed Hynes' suggestion that certain advertising which he had reviewed was "*prima facie* fraudulent." The particular advertisement in question had to do with one of the principal allegations of fraud in this case, to wit, the advertising representation that Albuquerque is growing to the northwest and thus towards Rio Rancho. The Department attorney informed Ms. Hynes that if he had thought that representation to be fraudulent, he would not have permitted it to be made and would have rejected it. In this same vein, he informed Ms. Hynes and Mr. Edwards that the mode of the business with which they were concerned and which they were investigating was indeed permitted in the 1960's and early 1970's.

The attorney also informed Ms. Hynes of his expert view that the acquisition price of land which is subdivided is "irrelevant" and thus need not be disclosed to a purchaser. The attorney was not invited into the grand jury.

The essential point here is that with the government knowing full well based upon our conferences as well as the very detailed brief which we submitted to it, that a basic defense was good faith reliance on government approval, the government's failure and refusal to permit the grand jury to appraise evidence supporting this defense in a hopefully neutral and detached manner was completely thwarted.

I do not know the full extent of exculpatory evidence which was suppressed because of grand jury secrecy and because of the prosecutrix' refusal to discuss such matters with me. I can say that from my own investigations there is abundant evidence of defendants' reliance on government agencies and that a fair and impartial presentation to the grand jury would most certainly have warranted extensive testimony on this issue.

Ms. Hynes conduct towards Mr. Leonard Geller, the former sales manager, and towards the Department of State attorney, leads me to believe that the grand jury was not even informed of the availability of this sort of evidence.

In the course of the investigation, detailed questionnaires were presumably sent to thousands of residents and land owners of Rio Rancho by the government (see attached Exhibits A1-A3). I do not know the results of this canvassing by the government, but we were provided with copies of those questionnaires by a number of satisfied customer. And the results of my investigation reveal that there are a large number of residents and land owners who were satisfied and happy customers who have no complaints about the means or representations by which they were sold. It is not too much to suggest in view of the demonstrated strong bias of the prosecutrix in this case that a "carefully" selected portion of those questionnaires, if any, were put before the grand jury.

A further powerful indication of the potential unfairness of the grand jury presentation is the face of the indictment itself which reveals that the grand jury was improperly instructed on the law. Thus, Paragraphs 18(g)(xix) and (xxiv) of the indictment allege that the review and acceptance of the Company's disclosure statements and advertising literature by the Department of State of New York did not "as the defendants well knew constitute approval and verification * * * that statements contained in [the disclosure statements and advertising] * * * were not misleading or fraudulent * * *." This is simply an erroneous statement of the law or even at its most charitable, a biased and adversarial interpretation of New York law and certainly not one which would tend to give the defendants the benefit of any doubts, reasonable or even certain ones.

II. Motion to Dismiss for Vagueness.

The indictment consists of a largely incomprehensible, ambiguous array of allegations which seem to suggest as their central theme that the purchase of land at Rio Rancho was imprudent for the "overwhelming majority" of Amrep's 45,000 Rio Rancho Customers. As our memorandum submitted herewith demonstrates, the indictment does not allege any particular misconduct at any particular time or define with any particularity who it is the prosecution claims was the object of the scheme to defraud. The alleged victims of the fraud are described vaguely as the "overwhelming majority" of customers and then characterized and referred to throughout the indictment in a self serving way as "persons to be defrauded." Our memorandum details the vice in this broad characterization, and I must add that in a trial which may last four months and where the government may have hundreds of witnesses and the defense also many witnesses, the defense would forever be in the position of facing the claim that its witnesses were in the minority. The charging paragraphs of the indictment, too, are replete with vague and indefinite adjectives such as "safe," "sound," "rapidly," "greatly," "substantial," "brisk," and "easily." All of these terms which run through the indictment with great frequency are susceptible to dangerous and speculative interpretations and are hardly capable of precise definition.

III. Surplusage.

The memorandum herewith details the various categories of surplusage contained in the indictment. If this case is tried on the present indictment, there is great danger of the jury being confused or misled by inflammatory accusations as to sales techniques and other allegations which have no real import to the core of the charges which appear to have been made. These allegations can only create venom in the minds of the jurors.

Stanley S. Arkin

Stanley S. Arkin

Sworn to this [illegible]

day of January, 1976

Notary Public

ALICE LYNN [illegible]

[illegible]

A 8736.

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

JUL 22 1974

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

PMH:cc

Inc.

July 16, 1974

Mr. Michael Torres
& Ms. Patricia Torres
1518 57th Street
Brooklyn, New York 11219

Re: RIO RANCHO ESTATES, INC.

Dear

This office is inquiring about a number of transactions concerning Rio Rancho Estates, Inc. It has come to our attention that you purchased land from Rio Rancho Estates but later cancelled the purchase.

It would be a great assistance to us if you would take a few minutes to complete the enclosed questionnaire and return it to us in the enclosed self-addressed postpaid envelope. Please do not answer any questions "Yes" or "No" unless your memory is clear as to the correct answer. It is very important that any possible unfairness be avoided. No particular answer is either to your personal advantage or disadvantage. It is simply important to be accurate and fair.

Your cooperation in this important matter is greatly appreciated.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: Patricia M. Hynes
PATRICIA M. HYNES
Assistant United States Attorney
Chief, Consumer Frauds Unit

Enclosures (2)

EXHIBIT A-1

QUESTIONNAIRE

A 8737

1. Name:

2. Address:

3. Phone No. DAY: EVENING:

4. Address at time purchased land from RIO RANCHO

5. When did you purchase land from RIO RANCHO

   MONTH: YEAR:

6. How much land did you purchase?

7. What was purchase price?

8. Did you purchase land from RIO RANCHO (Check one)

   _____ at a sales dinner
   _____ following a visit to the property
   _____ after a personal visit by a salesman for the company
   _____ other (please explain)

9. What was the principal reason you bought land at RIO RANCHO (Check one)

   _____ investment
   _____ current homesite
   _____ retirement homesite
   _____ other (please explain)

10. Why did you cancel?

11. When did you cancel that purchase

    MONTH: YEAR:

12. At the time you purchased your land did the salesman for RIO RANCHO tell you [illegible] (Answer YES, NO or NOT SURE).

    (a) That the property you purchased would increase in value. _____

    (b) That you would have no trouble reselling the property. _____

    (c) That the company was going to set up a resale office. _____

    (d) That you could sell the property at a profit.

QUESTIONNAIRE (Cont'd.--Page 2)

(e) That there were many job opportunities in the Albuquerque area. ______

(f) That you ought to buy now because there weren't many lots left for sale. ______

(g) That you had to personally visit the property before you could exercise the six month refund provision in the contract. ______

(h) That you could deduct interest payments made to the company from your income tax. ______

(i) That you would not own the property before you completed payments. ______

(j) That you were responsible for taxes on the property during the time you were making installment payments. ______

(k) That if you changed your mind about the purchase that some accomodation could be made. ______

(l) That you would only be permitted to build a home on either 1/4 or 1/2 an acre in the building area regardless of how much land you purchased. ______

(m) That regardless of how much land you bought only payments made on 1/2 acre would be credited toward a lot in the building area. ______

(n) That you would probably have to pay more money for a lot in the building area. ______

(o) That if you stopped making payments the entire amount paid would be forfeited to the company. ______

13. At the time you purchased the property, did you believe (Answer YES or NO)

(a) That you would one day move to New Mexico. ______

(b) That you were making a good investment. ______

(c) That you would have no difficulty reselling the property. ______

(d) That there were many job opportunities in the Albuquerque area. ______

(e) That you could change your mind without loss. ______

14. Did you visit RIO RANCHO

MONTH: YEAR:

15. Did you see the actual lot you purchased (Answer YES or NO)? ____

(a) If NO, why not?

(b) If YES, how do you know this?

16. Did you verify this in any way (Answer YES, NO or NOT SURE)? ____

(a) If YES, how did you verify it?

17. Did your visit to RIO RANCHO alter you beliefs about RIO RANCHO (Answer YES or NO)? ____

18. If your answer to the last question is YES, then please answer the following questions

(a) Was the land at RIO RANCHO different in appearance than you had envisioned (Answer YES or NO)? ____

If YES, in which way?

(b) Was RIO RANCHO less developed than you had thought (Answer YES or NO)? ____

If YES, please explain.

(c) Was your particular parcel located where you thought (Answer YES or NO)? ____

If NO, please explain.

19. Did you read the contract before you signed the contract (Answer YES, NO or NOT SURE)? ____

20. Do you feel you had an opportunity to read the contract before you signed it (Answer YES or NO)? ____

21. Did you understand you were signing a binding contract to purchase land (Answer YES, NO or NOT SURE)? ____

22. Did you receive a [illegible]

23. If you received a property report before signing the contract, were you given enough time to read the property report before signing the contract (Answer YES, NO or NOT SURE)? ____

24. If you thought that the purchase of land at RIO RANCHO would be a good investment, did you change your opinion (Answer YES or NO)? ____

If YES, why?

H:cc
Enc.

QUESTIONNAIRE (Cont'd.--Page 4)

25. At the time you purchased your land what, if anything, were you told about

(a) Water:

(b) Electricity:

(c) Sewage:

(d) Roads:

26. Please use this space to provide any additional information.

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

[illegible]

PMH:cc

A 8741

August 1, 1975

Dear Consumer:

We have recently learned that you are a property owner at Rio Rancho Estates, and that you listed your land for sale with an Albuquerque Realtor.

It would be a great assistance to us if you would take a few minutes to complete the attached questionnaire and return it to us in the enclosed postpaid envelope by August 15, 1975, or as soon thereafter as possible. Please answer all questions which pertain to your experiences, and feel free to continue answers beyond the space provided. Be sure to include your complete address and telephone numbers as we may want to call you for additional information.

Thank you for your co-operation in this important matter.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By:
PATRICIA M. HYNES
Assistant United States Attorney
Telephone: (212) 791-0048/49/50

Enclosures (2)

A 8742

QUESTIONNAIRE

1. Name: 1.a. Age at time of purchase:

2. Address:

2.a. Address at time of purchase:

3. Phone No. DAY: EVENING:

4. When did you first buy land at RIO RANCHO

Date: Downpayment:
Total Price: No. Payments:
How much land:

5. Did you purchase additional land (Answer YES or NO)? ____

If YES,
Date:
Total price:
How much land:

6. What was your principal reason for purchasing land (Check one)

____ relocation
____ retirement home
____ investment
____ other (Please explain in space provided below)

7. When you purchased the land did your salesman or anyone from the company say anything about resale (Answer YES, NO or NOT SURE)? ____

7.a. Were you told that your purchase was a good investment (Answer YES, NO or NOT SURE)? ____

7.b. Were you told that you would be able to resell at a profit (Answer YES, NO or NOT SURE)? ____

8. Were you told that the company would set up a resale office (Answer YES, NO or NOT SURE)? ____

QUESTIONNAIRE (Cont'd.--Page 2)

9. When did you first try to resell property at RIO RANCHO

Month:
Year:
Asking Price:

10. What efforts have you made to resell your property?

11. Where have you listed the property for sale?

12. How long has the property been up for sale?

13. What is your present asking price?

14. How much have you paid to date for the land?

15. Did you list the property with a realtor in Albuquerque (Answer YES or NO)? ______

If YES, which one?

(Please forward any copies of correspondence with realtors)

16. When did you list it with a realtor in Albuquerque?

17. If you have sold your property, then answer the following questions

When did you resell:
For how much:
To whom:

18. What costs were involved in resale?

PMH:cg
[illegible]

QUESTIONNAIRE (Cont'd.--Page 3)

19. Did you make any profit (Answer YES or NO)? ________

If YES, how much?

20. Did you lose money (Answer YES or NO)? ________

If YES, how much?

21. Did you request permission from the company to resell (Answer YES, NO or NOT SURE)? ____________

22. Did you seek aid from the company to resell (Answer YES, NO or NOT SURE)? ____________

23. If you resold, did you notify the company in any way (Answer YES, NO or NOT SURE)? ____________

If YES, how did you notify the company?

When did you notify the company?

(We would appreciate your forwarding to us any correspondence you had with the company concerning resale of the land.)

24. You may use this space to supply any additional information.

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N.Y. 10007

A 8745

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

PMH:cc

September 5, 1975

Dear Consumer:

We have recently learned that you purchased property at Rio Rancho Estates.

It would be a great assistance to us if you would take a few minutes to complete the attached questionnaire and return it to us in the enclosed postpaid envelope by September 15, 1975, or as soon thereafter as possible. Please answer all questions which pertain to your experiences, and feel free to continue answers beyond the space provided. Be sure to include your complete address and telephone numbers as we may want to call you for additional information.

Thank you for your co-operation in this important matter.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By Patricia M. Hynes
PATRICIA M. HYNES
Assistant United States Attorney
Telephone: (212) 791-0048/49/50

Enclosures (2)

EXHIBIT A-3

·cc
.M.--Res.   A 8746

QUESTIONNAIRE

1. Name:

2. Present Address:

3. How long have you been living at your present address?

4. Previous Address:

5. How long were you living at your previous address?

6. Age: 7. Occupation:

8. Phone Number: (a) DAY: (b) EVENING:

9. When did you first purchase land at Rio Rancho?

    (a) Month and date:

    (b) Year:

    (c) Did you visit Rio Rancho before you purchased your land? YES_________ NO_______

    (d) Did you see the lots you purchased before you signed the contract? YES______ NO_______

10. How much land did you purchase at that time?

    _____ (a) 1/2 acre

    _____ (b) 1 acre

    _____ (c) more (if more, how many acres)

11. What was the purchase price?

    (a) Total Price:

    (b) Price Per Lot:

12. Where were the lots located (Unit, Block and Lot Numbers) and what type of lots were they (residential or commercial)?

QUESTIONNAIRE -- PAGE 2 -- Continued:

13. Did you purchase land from Rio Rancho? ____ Yes or ____ NO
[If you purchased land from a private party, please give name and address]

14. If you bought land at Rio Rancho on more than one occasion, please set forth the additional DATES of each purchase, AMOUNT of land purchased, PRICE of each purchase, LOCATION of the land purchased, and from WHOM you purchased the land (Rio Rancho or private party).

15. How did you learn about land for sale at Rio Rancho (e.g., TV, radio or newspaper ad; classified ad; billboard; visit to the property; invitation to a sales dinner)?

16. Please explain under what circumstances you purchased your land (e.g., at a sales dinner; after visiting the property; after a personal visit from a company salesman; as a private sale by an individual landowner).

17. What was your reason for purchasing land at Rio Rancho (e.g., investment; current homesite; retirement homesite)?

18. How long were you living in New Mexico at the time you first purchased land at Rio Rancho?

19. When did you move to New Mexico?

20. What was the reason for the move?

21. At the time you purchased your land did the salesman for

QUESTIONNAIRE -- PAGE 3 -- Continued:

RIO RANCHO tell you or was it your understanding or did any representative of RIO RANCHO ESTATES tell you or did any sales material lead you to believe (Answer YES, NO or NOT SURE):

(a) That the property you purchased would increase in value. __________

(b) That you would have no trouble reselling the property. __________

(c) That the company was going to set up a resale office. __________

(d) That you could resell the property at a profit. __________

(e) That you ought to buy now because there weren't many lots left for sale. __________

(f) That you would only be permitted to build a home on either 1/4 or 1/2 an acre in the building area regardless of how much land you purchased. __________

(g) That regardless of how much land you bought only payments made on 1/2 acre would be credited toward a lot in the building area. __________

(h) That you would probably have to pay more money for a lot in the building area. __________

(i) That if you stopped making payments the entire amount paid would be forfeited to the company. __________

(j) That the company would provide water, utilities, and other amenities to the lots you purchased. __________ If yes, within what period of time?

(k) That there was a low markup on the lots. __________

(l) That the city of Albuquerque could only grow in the direction of Rio Rancho and therefore your land would increase in value. __________

22. If you have changed your opinion or belief regarding any of your answers to question 21, please explain below or on the back of this page.

QUESTIONNAIRE -- PAGE 4 -- Continued:

23. What is the name of your salesman and any other representative of Rio Rancho who you had dealings with?

24. Did you receive any of the following pamphlets among your sales materials?

____ This Is My Land

____ How To Live, Retire, Invest In The Sunny Southwest

25. Have you paid for your land in full and do you have a deed to the property?

If not, are you still making payments?

When will your land be paid for in full?

If you stopped making payments, what was the reason?

Did you receive a refund of monies paid?

Was the money paid forfeited to the company?

26. Have you ever tried to sell your land at Rio Rancho?

If so, when?

How did you try to sell your land?

27. How long was your land on the market?

28. Were you successful in selling the land?

If so, how much land was sold and at what price?

29. To whom did you sell land?

30. When did you sell the land?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA,	:	
-against-	:	75 Cr. 1023 (CMM)
AMREP Corporation, *et al.*,	:	Affidavit
Defendants.	:	

- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARK S. ARISOHN, being sworn says:

I am an attorney at law associated with STANLEY S. ARKIN, p.c., attorneys for Howard W. Friedman and Henry L. Hoffman, defendants in this case. I submit this affidavit in support of defendants' motion for an *in camera* inspection by this Court of the grand jury minutes.

As further set forth below and in the accompanying affidavit of Stanley S. Arkin, there is substantial evidence that the grand jury was actively misled by the prosecution as to the existence of exculpatory information and its legal significance as an absolute defense which warrants review of the grand jury minutes by this Court.

This affidavit is addressed to the prosecution's treatment and ultimate use of a key grand jury witness--Leonard Geller--in their offices and before the grand jury. From discussions I have had directly with Mr. Geller and with John H. Doyle, III, Esq., Mr. Geller's attorney, it is evident that Geller was threatened and intimidated by government prosecutors and prevented by them from informing the grand jury of exculpatory information bearing directly on the charges in the indictment.

Leonard Geller, employed by AMREP over ten years ago, was the metropolitan area director for sales of Rio Rancho Estates.* He was principally responsible for training and recruiting salesmen, and to a large extent, conceived of and executed the sales practices used in the New York region, albeit as we discovered during the course of our investigations certain of his activities were in violation of express company policy.

Under a prosecutorial promise of immunity, Geller appeared and testified before the grand jury on July 22, 1975. In a conference on October 8, 1975, with Mr. Doyle, Geller's attorney, I was informed that following Geller's July grand jury appearance, Assistant United States Attorney Patricia Hynes told Doyle that there were "a lot of problems" with Geller's testimony which were "going to take a lot of work." For example, Ms. Hynes told Doyle that she was displeased that Geller denied before the grand jury that it was AMREP's policy to have its salesmen hide the Company's property disclosure statements beneath other voluminous promotional literature during sales presentations to potential customers so as to avoid the customers having access to them.

I was further informed by Doyle that in September, 1975, he had a meeting with Assistant United States Attorney Thomas Day Edwards, Chief of the Criminal Division, who told Doyle that because he believed Geller had committed perjury in the grand jury and was not "forthcoming" but merely testifying to "the Company line," he was "pessimistic about Geller not getting indicted."

---

* Geller is no longer employed by Amrep or any of its subsidiaries.

In a subsequent meeting between Edwards and Geller, Geller informed the prosecution of his belief that the purchase of land at Rio Rancho was a good investment and that the Company's advertising literature had been approved prior to use by New York's Department of State on the basis of on-site inspections. Additionally, Geller rejected as erroneous Edwards' persistently expressed opinion that the thrust of the Company's sales presentation was that the purchase of lots in Rio Rancho was a "secure" economic investment and that such a representation was a lie.

According to Doyle who was present at this meeting, Edwards warned Geller that if he did not "change his tune" his immunity would be withdrawn, and he would be indicted. Geller has stated that as a result of these types of threats he became intimidated and frightened. On November 11, 1975, Geller told me the following*:

> "There were several issues as a matter of fact, where at a particular point I felt that I was a target in this investigation that they [i.e., Ms. Hynes and Mr. Edwards] made me believe that if I wasn't in fact, prepared to admit, this was my conclusions, prepared to admit that I was guilty of some wrongdoings for the ten years I have been associated with the company, that if I did not take that sort of view that I would be indicted and convicted and a year from now I would be standing in front of a Judge and I would be going to jail and she [i.e., Ms. Hynes] pointed a finger at me and told me this, so there was a lot of pressure and intimidation that took place."

Geller further stated:

> "I felt very much intimidated especially by Mr. Edwards, when I tried to relate to them why I had certain feelings about not being guilty of any wrongdoing or the company not being guilty of any wrongdoing in explaining my experience in working with the company, they shut me off completely."

---

*I was informed by Mr. Doyle that the prosecution was aware from the beginning of its conversations with Geller that he intended to communicate to counsel for his employers the substance of his conversations with the government.

Indeed, Geller told me that the prosecutors bluntly rejected his efforts to inform them of information which was favorable to the defendants. Thus, Geller stated as follows:

> "It was practically impossible to say anything positive about Rio Rancho and the corporate offiers of Amrep to both Patty Hynes and Tom Edwards without them coming right down your throat; and as a matter of fact, they did not want to hear the company 'bullshit' in plain language."

On December 24, 1975, Mr. Doyle informed me of the following information provided to the prosecutors by Geller and characterized by them as "company bullshit":

1. there was never any Company authorization for sales personnel to represent that lots at Rio Rancho would have any resale value within the foreseeable future;

2. Geller believed that the representations made in the Company's literature and films had been approved by the State of New York;

3. Geller believed that the purchase of Rio Rancho lots was in fact a safe and secure financial investment, that the growth of the Albuquerque area would have an impact on land values at Rio Rancho, and that defendants honestly held those same opinions;

4. Geller believed that many purchasers bought Rio Rancho property to relocate and disagreed with the prosecution that the "overwhelming majority" of purchasers bought the lots as an investment; and

5. Geller believed on the basis of the rate of sales that the property would be sold out in the not far

future, that there would be a secondary market for the property, and that the Company would continue to develop the property because of its commitment to do so and because of the profit to be made through sale of homes.

The prosecution's unfair selectivity carried over into the grand jury. Thus, on October 29, 1975, Geller informed me that Ms. Hynes avoided asking him certain questions in the grand jury which, because of her prior conversations with him, she knew would evoke testimony favorable to defendants. Additionally, Geller was sufficiently intimidated by the prosecution's threats of withdrawing its promise of immunity and the spectre of being indicted, convicted, and sent to jail, that he was fearful of testifying about the items the government insisted were "Company bullshit."

Other areas of inquiry, such as Geller's belief that the Company had never made a commitment it did not keep, were, according to Geller, completely cut off in the grand jury. And on another issue--the Company's handling of complaints and issuance of refunds--Geller claims that Ms. Hynes conveyed a false impression to the grand jury and refused to give him an opportunity to correct it.

The prosecutors' threatening and intimidating response to Geller's attempt at informing them of evidence favorable to defendants and the intentional manner in which such exculpatory evidence was kept from the grand jury is, we submit, substantial indication that the grand jury was misled and thus precluded from exercising its proper function.

WHEREFORE, there should be an in camera inspection of the grand jury minutes by this Court and a dismissal of the indictment upon a determination that the grand jury was misled by the prosecution.

Mark S. Arisohn
Mark S. Arisohn

Sworn to this 22nd
day of January, 1976

Alice Lynn Witkowski
Notary Public

ALICE LYNN WITKOWSKI
Notary Public, State of New York
31-4525272 – New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x
:
UNITED STATES OF AMERICA,
:
: **AFFIDAVIT**
-against-
: 75 Cr. 1023
(CMM)
AMREP Corporation, et al.,
:
Defendants
:
- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWARD B. WINSLOW, being duly sworn, deposes and says:

1. I am a New York attorney, having been admitted to the Bar in 1951, and have been a practicing attorney in New York City continuously since January 1, 1952. I submit this affidavit in support of the motion of defendants Howard W. Friedman and Henry L. Hoffman to dismiss the indictment on the ground that its prosecution would violate due process.

2. Until 1962 I was an associate with the firm known in the 1950's as Dwight, Royall, Harris, Koegel & Caskey, and from 1962 until February 1968 I was a member of that firm (then known as Royall, Koegel & Rogers). Since February 1968 I have been a member of the firm of Jacobs Persinger & Parker.

3. From 1962 until February 1968 Royall, Koegel & Rogers was outside counsel to Defendant AMREP Corporation

("AMREP") and since February 1968 Jacobs Persinger & Parker has been outside counsel to AMREP. I have been the partner in charge of AMREP matters at both firms.

4. As outside counsel, my firms had responsibility from 1963 until 1971 for the preparation of filings required to be made by Rio Rancho Estates, Inc. under the New York law regulating the sale of subdivided lands (Article 9-A of New York's Real Property Law), and also under the Federal Interstate Land Sales Full Disclosure Act (15 U.S.C. §1710, et seq.) ("Federal Act") from its effectiveness in 1969 until 1971. From 1963 until various dates between 1969 and 1971, either directly or through the use of local counsel, my firms also had responsibility for the filings under the laws of various other states which regulated the sale of subdivided lands. Thus, I acquired a general familiarity with the regulation of the subdivided land industry by the Federal government and the various states and acquired a thorough familiarity with the New York law and its implementation by the New York Department of State. More than a dozen states in which Rio Rancho Estates lots have been sold regulate the sale of subdivision lots. The common objective of the regulation is to prevent fraud in the sale of the lots. The laws of some of these states require the filing of information concerning the subdividers, the subdivision and the offerings. Other states additionally require the furnishing of a disclosure document (variously called a "Subdivision Report", "Prospectus" or "Offering Statement") to each prospective purchaser of a lot. The disclosure document

generally is written or approved by the administering agency and contains information concerning the subdivision and the offering which the administrator believes prospective purchasers should have prior to executing a land sales contract. The administering agencies in seven of the states in which Rio Rancho Estates has been registered -- Kansas, Michigan, Nebraska, New Jersey, New York, Ohio and Pennsylvania -- have inspected the property at least once, and New York has inspected it repeatedly. Five of these seven states -- all but Nebraska and Ohio -- also require the delivery of a disclosure document to prospective lot purchasers.

5. The Federal Act requires the registration of the offer and sale of subdivided lots with the Office of Interstate Land Sales Registration ("OILSR"). The registration is effected by the filing with OILSR of a Statement of Record containing detailed information concerning the property together with a disclosure document (called the "Property Report"). (A copy of the most recent Property Report is annexed as Exhibit A). The Property Report, which must be delivered to each prospective purchaser, contains that information specified by and in the format set forth in the OILSR Regulations. Other information may be required by OILSR, based upon its review of the material filed with it, which it deems necessary to make the required statements not misleading.

6. OILSR has the power to suspend a registration and thereby stop the sale of subdivided land if it has

reasonable grounds to believe that the Statement of Record includes an untrue statement of a material fact, or omits a material fact required by the Federal Act or the OILSR Rules, or omits a material fact which is necessary to make statements therein not misleading. Rio Rancho Estates, Inc. registered under the Federal Act all of its then platted lots in April 1969 at the time that such Act became effective, and it repeatedly filed Amendments to its Statement of Record to register additional lots as they were platted. The practice of OILSR was to review each filing and, upon the making of any changes which it deemed necessary, to inform the Company in writing of the effectiveness of the Amendment. On at least eleven separate occasions through July 9, 1970, OILSR advised by letter of the effectiveness of the registration made by an Amendment and in its letter stated that OILSR had examined the filing and that its "examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto" (see Exhibits B-1 - B-11 annexed hereto).

7. In March 1975, following the filing of a complaint by the Federal Trade Commission against Rio Rancho Estates, Inc., OILSR suspended the Rio Rancho Estates registration pending the filing of an amendment to the Statement of Record and the Property Report. That amendment was filed on May 8, 1975, and with full knowledge of the allegations made by the Federal Trade Commission (many of which are the same as in the indictment at bar), OILSR ended its suspension and the amended Statement of Record became

effective. I consider it significant that OILSR has permitted the continuation of the sale of lots without suspension following the indictment.

8. The form of Property Report used following the April 1975 suspension contains substantially more information than that contained in the Property Report used prior thereto. The reason is that OILSR amended its Regulations to call for the expanded information with respect to Statements of Record which became effective after December 1, 1973 or which were amended subsequent to that date. The first amendments to the Rio Rancho Estates registration subsequent to December 1, 1973 did not become effective until May 1975. Thus, at all times the Property Report used by Rio Rancho Estates, Inc. in connection with the sale of its lots was that required by the then applicable OILSR Regulations.

9. New York State has regulated the sale of subdivided lots for nearly forty years by Article 9-A of the Real Property Law. Until July 1963, this Law and the Regulations of the Department of State ("Department") thereunder prohibited the offer or sale in New York State of subdivided lots until (a) there had been filed with the Department a verified Statement containing specified data and documents relating to the subdivision, the subdivider and the lots to be offered, and all advertising material to be used in connection with the sale of lots, (b) a representative of the Department had inspected the property, and (c) the verified Statement had been accepted for filing by the Department.

10. Effective July 1, 1963 the New York Law and Regulations were expanded (i) to require, prior to the offer or sale of lots, the filing with the Department of an Offering Statement containing specified information concerning the subdivision together with such other information as the Department deems "necessary or appropriate in the public interest for the protection of purchasers", (ii) to require delivery of a copy of the Offering Statement to each prospective purchaser of a lot, (iii) to require the submission to the Department for review and approval advertisements of the lots, and (iv) to set forth standards to be used by the Department in reviewing advertising. The Department Regulations also specified detailed requirements with respect to the form of contract used to sell the lots. Attached hereto as Exhibit C is a copy of the most recent New York Offering Statement.

11. The first filing for Rio Rancho Estates under Article 9-A was made at the end of 1961. The property was inspected by a Department representative in early 1962 and at least four more times through 1971 as added portions of the property were platted and the roads constructed. The inspectors included a Deputy Secretary of State, a General Counsel to the Department, and staff counsel. I am informed that the persons who inspected were instructed to sight each lot and to make independent inquiries in the Albuquerque area to verify representations furnished by the Company.

12. I recall that one or more of the reviewing attorneys for the Department focused on the "exchange offer" provision contained in the contracts for the sale of

residential lots at Rio Rancho Estates, which provided in effect that the Company was not obligated to provide water and other utilities to a purchaser's lot at any particular time, but that, if utilities had not reached the purchaser's lot when he was ready to build, the Company would furnish the purchaser a lot in an area then served by utilities in exchange for purchaser's lot without charge. The Department personnel concluded that the bonding of the installation of the water system was not required.

13. Through 1969, the language of the various New York Offering Statements was generally drafted by me but was revised to meet comments by Department counsel, which comments reflected their review and information learned during on site inspections. In 1969 the Department counsel then assigned to the Rio Rancho Estates filings became dissatisfied with the format and substance of the Offering Statement then being used and rewrote it; and the Offering Statements dated September 1, 1969 and thereafter reflected such rewriting.

14. The Department Regulations require approval of advertising prior to use. Thus, the advertising for Rio Rancho Estates used in New York has been submitted to the Department for review and examination of "form, language and content." Once approved, a number ("NYA number") was assigned to the advertisement by the Department. The majority of the advertising representations in paragraphs 18 (i), (j), (l) and (p) of the indictment which are quotations were contained in promotional literature reviewed, examined and approved by the Department of State. Indeed, in a number of cases the quoted representation was made in several different advertise-

ments, received different NYA numbers and was thus reviewed, examined and approved several times over a period of years (annexed as Exhibits D-1 - D-4 are schedules setting forth the quoted representations and the NYA numbers assigned to the advertising containing the representations).

15. Approval from the Department was not granted as a matter of course. Often the Department required changes to be made before approving advertising (see letter from the Department's Assistant Counsel, Edward V. Alfieri, dated July 11, 1963, annexed as Exhibit E), and other advertising was rejected (see letter of Mr. Alfieri, dated September 30, 1963, annexed as Exhibit F).

16. Since the law requires the Department to prevent fraud in the sale of the lots, it is my belief that by accepting the Rio Rancho Estates filings and by approving its advertising with the knowledge acquired by repeated inspections, the Department did in fact approve as lawful and proper the descriptions in the Offering Statements of Rio Rancho Estates, the lots, the state of the improvements, the exchange offer concept, and the situation with respect to water and other utilities, among other things, as well as the statements made in the written promotional materials.

17. The regulation of the sale of Rio Rancho Estates lots by the Federal government and the various states were such that compliance with those laws was a massive and expensive undertaking. Both OILSR and the various states with which Rio Rancho Estates registered received voluminous

material which enabled them to evaluate the property and the sale of Rio Rancho Estates lots.

Edward B. Winslow

Sworn to this 22nd day of
January, 1976

Notary Public

STUART E. GRASS
Notary Public, State of New York
No. 31-4523433
Qualified in New York County
Commission Expires March 30, 1976

A 8765

PROPERTY REPORT

NOTICE AND DISCLAIMER

BY OFFICE OF INTERSTATE LAND SALES REGISTRATION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Interstate Land Sales Full Disclosure Act specifically prohibits any representation to the effect that the Federal Government has in any way passed upon the merits of, or given approval to this subdivision, or passed upon the value, if any, of the property.

It is unlawful for any one to make, or cause to be made to any prospective purchaser, any representation contrary to the foregoing or any representations which differ from the statements in this Property Report. If any such representations are made, please notify the Office of Interstate Land Sales Registration at the following address:

Office of Interstate Land Sales Registration,
HUD Building, 451 Seventh Street, S.W.
Washington, D.C. 20410

Inspect the property and read all documents. Seek professional advice.

Unless you received this Property Report prior to or at the time you enter into a contract, you may void the contract by notice to the seller.

If you received the Property Report less than 48 hours prior to signing a contract or agreement you have until midnight of the third business day following the consummation of the transaction to revoke your contract by notice to the seller.

1. Name(s) of Developer: Rio Rancho Estates, Inc.

   Address: 3900 Southern Boulevard, S.E.
   Rio Rancho Estates, New Mexico 87124

2. Name of Subdivision: Rio Rancho Estates

   Location: Sandoval County, State of New Mexico

   (a) Effective Date of Property Report: December 15, 1975

IMPORTANT READ CAREFULLY

Name of Subdivision: Rio Rancho Estates

By signing this receipt you acknowledge that you have received a copy of the property report prepared pursuant to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

Received by ....

Street Address ....

Date ....

City .... State ....

Zip ....

Notwithstanding your signature by which you acknowledged that you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.

A 8766

PROPERTY REPORT

NOTICE AND DISCLAIMER

BY OFFICE OF INTERSTATE LAND SALES REGISTRATION

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Received by ....
Street Address ....
Date ....
City .... State ....
Zip ....

Notwithstanding your signature by which you acknowledged that you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.

A 8767

WARNING

WITH THE EXCEPTION OF ROADS, LARGE AREAS OF THIS SUBDIVISION ARE UNDEVELOPED AND ARE PRESENTLY WITHOUT IMMEDIATE DEVELOPMENT POTENTIAL. YOU ARE ALSO ADVISED THAT IF YOU DESIRE TO BUILD A HOME ON YOUR LOT BEFORE UTILITIES HAVE REACHED IT, YOU MAY HAVE TO EXCHANGE YOUR LOT FOR ONE IN A BUILDING AREA IN ORDER TO CONSTRUCT A HOME. IN THIS REGARD, YOUR ATTENTION IS PARTICULARLY DIRECTED TO THE UNDERSCORED LANGUAGE AS NOTED IN QUESTION 10 (ROADS, WATER, ELECTRICITY, TELEPHONE AND SEWAGE) OF THIS PROPERTY REPORT. YOUR ATTENTION IS DIRECTED TO QUESTION 25 OF THIS PROPERTY REPORT.

WARNING

THERE IS NO ASSURANCE THAT YOUR LOT WILL INCREASE IN VALUE OR THAT THERE WILL BE A RESALE MARKET FOR LOTS IN THIS SUBDIVISION. THESE ITEMS WILL DEPEND ON FACTORS LIKE THE EXTENSION OF UTILITIES. THEREFORE, FUTURE DEVELOPMENT AND APPRECIATION OF LAND VALUES IS DIRECTLY RELATED TO YOU AND OTHER LOT PURCHASERS BUILDING HOMES IN THIS SUBDIVISION.

WARNING

YOU ARE PRECLUDED FROM BUILDING ON THE PROPERTY UNTIL THE PURCHASE PRICE HAS BEEN PAID.

b. This offering consists of:

94,529 lots recorded on various plats which have been filed in the Office of the County Clerk of Sandoval County in Rio Rancho Estates Plat Book 1 pages 1 thru 137 and Plat Book 2 Pages 1 thru 68 as set forth below.

DESCRIPTION OF LANDS

Plats of Rio Rancho Estates recorded in the Office of the County Clerk of Sandoval County, New Mexico, Rio Rancho Estates Plat Book 1.

UNIT	PLAT PAGE	NO. OF LOTS
1	23 thru 26, 61, 1B	3,527
2	19 thru 22, 61, 1B	3,381
3	5, 6, 17, 18, 126	2,538
4	2, 3, 7, 8, 64, 1B	2,658
5	27 thru 29, 61, 64, 1C, 76 ,	3,020
6	31 thru 34, 61, 1E	3,437
7	37 thru 39, 54, 55, 1E, 69, 70, 104	3,488
8	9, 40, 41, 45, 46, 63, 90	3,623
9	10, 11, 15, 16, 63, 64, 1B	2,302
10	4, 12, 14, 73 thru 75	2,965
11	35, 36, 50, 58 thru 60, 63, 64, 66, 72, 89, 106, 114, 116 thru 118, 124, 137	4,676
12	47, 52A, 53, 56A, 57A, 67, 71, 72, 76, 77, 90, 105, 125	3,482
13	44, 48, 49, 51A, 63, 69 thru 72, 77, 87, 88, 90, 98, 106, 107	5,069
16	1, 1A, 1D, 13A, 42A, 43A, 62 thru 65, 68, 1E, 70, 76, 78, 90	3,320
17	79 thru 86, 90, 95, 107, 125	4,492

Plats of Rio Rancho Estates recorded in the Office of the County Clerk of Sandoval County, New Mexico, Rio Rancho Estates Plat Book 2

UNIT	PLAT PAGE	NO. OF LOTS
20	32, 33, 37 thru 40, 42, 58 thru 65, 68	7,186
21	8, 11, 12, 26, 31, 35, 39, 42	4,625
22	3, 4, 6, 7, 9, 10, 16, 26, 39, 57, 66, 67	4,761
23	1, 2, 5, 13, 14, 17, 18, 26, 30, 36, 38, 56	6,007
24	15, 19, 24, 25, 27 thru 30, 36, 39, 55, 68	6,179
25	34, 42, 48 thru 54	5,810
26	20 thru 23, 36, 39, 41, 43 thru 47	7,983

See Schedule "A" For Complete Description.

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3. List names and population of surrounding communities and list distances over paved and unpaved roads to the subdivision.

Name of Community	Population	Paved Roads	Unpaved Roads	Total
Albuquerque	316,000****	9 miles	6 miles	15 miles*
		16 miles	6 miles	22 miles**
		6.2 miles		6.2 miles***
Bernalillo	4,000	7 miles	6 miles	13 miles
Corrales	1,700	8 miles	6 miles	14 miles

*To Albuquerque City Limits.
**To Downtown Albuquerque.
***Distance from entrance of subdivision to Albuquerque City Limits.
****Greater Albuquerque 1970 Census.

4. a. Will the sales contract be recordable? Yes or No?

Yes. The contract is recordable and may be recorded at your expense.

b. In the absence of recording the contract or deed, could third parties or creditors of any person having an interest in the land acquire title to the property free of any obligation to deliver a deed? Yes or No?

Yes. In the absence of recording the contract or deed, your right to the title of the land may be defeated by such third parties as subsequent purchasers or creditors of any person having an interest in the land.

However, all contracts provide that in the event the Developer is unable to convey title free and clear of all liens and encumbrances, except for unpaid taxes payable by you, zoning or other applicable ordinances, regulations and statutes, covenants, restrictions, mineral reservations and easements of record, the Developer will return all payments made by you under your contract and the contract will be cancelled. However, see Question 21 concerning a limitation of your legal remedies against the Developer should the contract be cancelled.

c. State whether and/or when the contract or deed will be recorded, and who will record it. State who will bear the costs of recordation, and the amount if those costs are to be borne by the purchaser.

The Developer will not record the sales contract but you may do so at your expense. The fee for recording the contract is $2.75. The Warranty Deed will be recorded by the Developer at your expense and delivered to you within 60 days after all monies due and owing under the sales contract have been paid. The fee for recording the deed is $1.75.

d. What provision, if any, has been made for refunds if buyer defaults? If none, and the buyer's payments are to be retained, state whether his loss will be limited to the amount of his payments to date, or whether he will be responsible to the Developer or his assignees for additional damages or for the balance of his contract.

None. If you are in default under your sales contract and continue to be in default for a period of 60 days, the Developer may elect to terminate the contract by notifying you in writing by certified or register mail. You have a limited period of time, specified in the contract, in which to cure the default, but if a contract is terminated because of your default, all payments made may be retained by the Developer as liquidated damages and not as a penalty, and you may be responsible to the Developer or his assignees for additional damages or for the balance of your contract.

e. State prepayment penalties or privileges, if any.

You may prepay the amount outstanding on the purchase contract without penalty at any time and receive your deed.

5. Is there a blanket mortgage or other lien on the subdivision or portion thereof in which the subject property is located? Yes or No? If yes, list below and describe arrangements, if any, for protecting interests of the buyer or lessee if the Developer defaults in payment of the lien obligation. If there is such a blanket lien, describe arrangements for release to a buyer of individual lots when the full purchase price is paid.

Yes, but only as to certain lots.

Type of Lien	Effect on Buyers If Developer Defaults
Purchase Money Deeds of Trust (Mortgages).	None.

Certain lots are subject to Purchase Money Deeds of Trust (Mortgages) held by the First National Bank in Albuquerque, as Trustee, securing $1,358,817; $1,595,302; $928,267; $431,782.95 and $1,237,091.77, respectively. The Developer is required to pay the mortgages over six (6) years in installments of $226,469; $265,884; $154,711; $86,356.59 and $206,515.36, respectively, per year. The Developer obtains releases from the mortgages, at specified rates per acre, of any lots, selected by it, as payments are made. The mortgages provide that upon payment by you of the full purchase price of your lot(s) in accordance with the terms of the purchase contract, you will receive a release from the lien of the mortgage on your lot(s) without any further payment. You shall be entitled to said release whether or not the Developer shall be in default in the performance of its obligations under the mortgage(s).

6. Does the offering contemplate leases of the property in addition to, or as distinguished from, sales? Yes or No? If yes, a lease addendum must be completed, attached, and made a part of the Property Report.

No.

7. Is buyer or lessee to pay taxes, special assessments, or to make payments of any kind for the maintenance of common facilities in the subdivision (a) before taking title, or (b) after taking title? If yes, complete the schedule below:

Yes, both before and after taking title.

	Approximate Amount of Buyer's Annual Payments
Taxes	Consult local taxing authorities for precise amounts.
Special Assessments	None currently.
Payments to Property Owners' Association	None.
Other	None.
Specify	Not applicable.

Taxes are to be paid by the Developer until the end of the calendar month in which the purchase contract is executed and, thereafter, are to be paid by you.

The Developer owns all of the common facilities and will maintain such facilities without charge to the lot owners until at least through 1975, and may continue to do so thereafter for a limited period of time, on a year to year basis although it is not contractually obligated to do so. Thereafter, the Developer assumes that a Community Association will be formed voluntarily by the residents of the subdivision to assume the responsibilities of maintenance which cost about $135,000 per year. At such time or at such time thereafter as the Developer may choose, the Developer may, in its discretion, dedicate, convey or sell the recreational facilities to the Association. There is no assurance, however, that such an Association will be formed. However, if this should happen, membership will not be required for all lot owners, but if you wish to use the facilities you may have to pay a disproportionate share of the maintenance cost of the recreational facilities.

8. a. Will buyer's downpayment and installment payments be placed in escrow or otherwise set aside? Yes or No? If yes, with whom? If not, will title be held in trust or in escrow?

No, except as required by various state laws.

b. Except for those property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, will buyer receive a deed free of exceptions? Yes or No? If no, list all restrictions, easements, covenants, reservations and their effect upon buyer.

No. The property is subject to various restrictions, covenants and reservations as set forth below, but the Developer believes that none of them will interfere with the use of lots as homesites or, with respect to lots offered for use other than homesites, for the uses permitted by the restrictive covenants applicable to such lots. The restrictions, easements, covenants and reservations (none of which apply to all lots) are as follows:

(i) Reservations as to certain minerals contained in the Patent from the United States of America to the Heirs of Francisco Montes Vigil, et al, recorded in Vol. 2, page 396, Deed Records and Vol. 23, page 83, Miscellaneous Records of Sandoval County, New Mexico.

(ii) Easements and rights of way for streets, roads, ditches, canals, pipe lines, gas lines, telephone and telegraph lines and utility lines.

(iii) Building Restrictions and Covenants affecting the lots as imposed by Rio Rancho Estates, Inc.

(iv) Reservations by A. R. and Allie D. Brownfield of 1/32 of all minerals, as set forth in Warranty Deed recorded Oct. 19, 1948 in Vol. 6, page 136, and Quitclaim Deed recorded in Vol. 6, page 137, Deed Records of Sandoval County, New Mexico.

(v) Reservation by Baylor and Koontz of 1/25 of all oil, gas and hydrocarbon in deed recorded in Vol. 9, page 338, Deed Records of Sandoval County, New Mexico.

(vi) Reservation by J. E. Baylor, Jr. and Barbara Jo Baylor, his wife, and J. F. Koontz and Ella Koontz, his wife of a 32% non-participating interest in all minerals, including oil and gas, as set forth in Agreement dated July 24, 1958 and recorded in Vol. 12, page 485, Miscellaneous Records of Sandoval County, New Mexico.

(vii) Reservations by the Santa Fe Pacific Railroad Company of oil, gas and minerals, as set forth in Warranty Deed dated December 6, 1938, and recorded in Vol. 5, page 42, Deed Records of Sandoval County, New Mexico, as modified by the release from the Atchison, Topeka and Santa Fe Railway Company recorded in Volume 8, page 279, and the releases from the Santa Fe Pacific Railroad Company recorded in Volume 8, page 250, and as Docket No. 30595 release records of Sandoval County, New Mexico, and the release from the Santa Fe Pacific Railroad Company dated September 11, 1970 and recorded as document No. 37529 on January 25, 1971 in the records of the County Clerk, Sandoval County, New Mexico.

(viii) Reservations by the Santa Fe Pacific Railroad Company of oil, gas and minerals, as set forth in Warranty Deed dated August 2, 1948, and recorded in Vol. 6, page 120, Deed Records of Sandoval County, New Mexico, as modified by the release from the Atchison, Topeka and Santa Fe Railway Company recorded in Volume 8, page 279, and the releases from the Santa Fe Pacific Railroad Company recorded in Volume 8, page 250, and as Docket No. 30595 release records of Sandoval County, New Mexico, and the release from the Santa Fe Pacific Railroad Company dated September 11, 1970 and recorded as document No. 37529 on January 25, 1971 in the records of the County Clerk, Sandoval County, New Mexico.

(ix) Reservations by the Santa Fe Pacific Railroad Company of oil, gas and minerals as set forth in Warranty Deed dated May 10, 1944, and recorded in Vol. 5, page 514 and Vol. 7, page 33, Deed Records of Sandoval County, New Mexico.

(x) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee, dated August 8, 1969, and recorded as Docket No. 28473 on August 8, 1969, Deed of Trust records of Sandoval County, New Mexico.

(xi) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee, dated January 14, 1970 and recorded in Vol. 5, page 484, Deed of Trust Records of Sandoval County, New Mexico.

(xii) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee, dated April 3, 1970, and recorded in Vol. 5, page 512, Deed of Trust Records of Sandoval County, New Mexico.

(xiii) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee dated January 25, 1971 and recorded as document No. 35732 on January 25, 1971 in the records of the County Clerk of Sandoval County, New Mexico.

(xiv) Deed of Trust from Rio Ranche Estates, Inc. to the First National Bank in Albuquerque, Trustee dated February 25, 1971 and recorded as document No. 38579 on February 25, 1971 in the records of the County Clerk of Sandoval County, New Mexico.

All of the minerals in and under the lot(s) have been reserved by Developer or its predecessors in title, but the sale of the lot(s) shall include a perpetual right to receive one-half of all royalties and/or proceeds of actual mineral production to which Developer becomes entitled and which are attributable to the lot(s) as and when such royalties or proceeds are received by Developer.

The Shell Oil Company has been granted the right to drill on certain lots for oil and gas. If the above-described oil and gas rights are enforced against your lot and such enforcement results in any physical injury to the surface of the lot, (A) Prior to the time that title is due to pass to you, you shall have the option of either (1) accepting title as offered; (2) exchanging your lot for another available lot, which is, at the time of exchange, equal in value to the lot being exchanged (in a registered area); or (3) obtaining a full refund of the purchase price; or (B) After a Warranty Deed has been issued and title has passed to you, you shall have the right to exercise the options set forth in 2 or 3 of this paragraph. The Company does not know of the existence of any oil, gas or minerals on these premises which could be removed on a commercially feasible basis by any presently known methods.

c. List the permissible uses of the property based upon the restrictive covenants, and which are consistent with local zoning ordinances.

There are no local zoning ordinances affecting the use of the property; however, the Developer has seen fit to impose certain restrictive covenants on the property. The covenants provide for an Architectural Committee composed of individuals designated by the Developer and such Committee must review and approve all plans before construction. The Committee may alter your plans to build on or to use your lot. The Developer has the controlling interest in the Architectural Committee.

You will be required to obtain a building permit before construction of a home on your lot. Building permits may be obtained from:

State of New Mexico
Construction Industries Commission
505 Marquette Street
Albuquerque, New Mexico 87101

The building restrictions on residential lots (i) prohibit various non-residential structures and require dwellings to have certain minimum areas of living space, (ii) provide the minimum size lot on which buildings may be erected, (iii) limit the period during which unfinished structures can remain on a lot, and (iv) contain other restrictions designed to prohibit undesirable acts and uses of the lots.

Restrictive covenants on lots designated for industrial and commercial use are designed to prohibit undesirable acts and uses of the lots.

Copies of the restrictive covenants applicable to specific lots sold are attached hereto and are incorporated by reference.

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d. List all existing or proposed unusual conditions relating to the location of the subdivision and to noise, safety or other nuisances which affect or might affect the subdivision.

There are no unusual conditions relating to the location of the subdivision or other nuisances which affect or might affect the subdivision. However, during the late winter and early spring, strong winds occasionally carry loose surface soil along and create occasional dust storms.

In the event your lot is affected by small wash basins or low ground which is subject to periodic flooding or arroyos, you shall have the right to either exchange your lot for another available lot which is, at the time of exchange, equal in value to the lot being exchanged (in a registered area) or to obtain a full refund of monies paid in pursuant to your Agreement.

9. List all recreational facilities currently available, proposed, or partly completed (e.g. swimming pools, golf courses, ski slopes, etc.) and complete the following format for each facility:

Facility	**% Complete**	**Estimated Completion Date**	**Financial Assurance of Completion**	**Developer Obligated**	**Buyer's Cost or Assessments***
1. Two Community Center Complexes (each including a clubhouse, swimming pool, kitchen, meeting and social facilities, bath house and showers)	100%	N/A**	N/A	N/A	N/A
2. Ball Park	100%	N/A	N/A	N/A	N/A
3. Basketball Court	100%	N/A	N/A	N/A	N/A
4. Putting Green	100%	N/A	N/A	N/A	N/A
5. Youth Activity Center	100%	N/A	N/A	N/A	N/A

**N/A--Not Applicable

*The Developer owns all of the above facilities and will maintain such facilities without charge to the lot owners until at least through 1975, and may continue to do so thereafter for a limited period of time on a year to year basis although it is not contractually obligated to do so. Thereafter, the Developer assumes that a Community Association will be formed voluntarily by the residents of the subdivision to assume the responsibilities of maintenance which cost about $135,000 per year. At such time or at such time thereafter as the Developer may choose, the Developer may, in its discretion, dedicate, convey or sell the recreational facilities to the Association. There is no assurance, however, that such an Association will be formed. However, if this should happen, membership will not be required for all lot owners, but if you wish to use facilities you may have to pay a disproportionate share of the maintenance cost of the recreational facilities.

The Rio Rancho Golf and Country Club, a private country club with initiation fees and annual dues offering 18-hole golf course and clubhouse, has been completed and is currently in operation. Membership is subject to the rules of the club. The club is 4.4 miles from the center of the property.

10. State availability of the following in the subdivision: State any estimated costs or assessments to buyer or lessee. If only proposed or partly completed, state estimated completion date, state provisions to assure completion, and give an estimate of all costs to buyer or lessee, including maintenance costs.

You are advised that at the present time only the lots in the "building areas" (see the lots identified as "B/A" in Units 7, 11 and 16 of Schedule A attached to this Property Report) can be furnished utilities upon request without extension cost to you. If your lot is not included in such "building areas" and if you decide to build thereon (and not exchange for a lot in a "building area") before utilities reach the area of your lot, you probably will be unable to obtain utilities, and if you can obtain them, you and not the Developer will have to pay for the cost of extending utilities to your lot. These extension costs could be extremely expensive and economically unfeasible. These costs are directly related to the distance of your lot from other lots which presently have homes with utility services. You are also advised that if you desire to erect a home before utilities are available to your lot, you have a contract right to exchange one single ½ acre of residential property for one residential building lot of comparable value of ½ acre or smaller (but not less than 9,900 sq. ft.) located in an area already served by utilities. Note, however, that the Developer will designate which lot in the even exchange areas will be available to you. This exchange may result in added cost to you if the exchange is not to a company-designated "even exchange" area. Note, also, that only one such ½ acre may be so exchanged for each home to be built and any acreage in excess of ½ acre which you may have purchased (or lots of size equivalent to such excess) must be retained by you. If for any reason Developer does not have available for exchange a lot served by utilities, Developer will cause utilities to be extended to your lot when you are ready to commence construction of a house. The Developer has not, however, set aside any money or entered into any bond or escrow arrangement to assure the extension of utility lines.

a. Roads:

1. Access:

Rio Rancho Estates may be reached from Albuquerque by New Mexico Routes 44 and 528, both two-laned roads with macadam surfaces approximately 50 feet in width and Route 46, a two-laned road, 28 feet in width. The roads, which are maintained by the State of New Mexico, are presently in good condition.

2. Road System Within The Subdivision:

The roads upon which lots being offered are located have been completed and are maintained in good condition. All roads are at least two lanes wide, with the dedicated width of all roads at least 50 feet. Approximately 30.9 miles of roads within the first residential areas have been paved with a macadam surface 28 feet in width. State Highway 528, a paved macadam road, runs through the eastern portion of the subdivision for approximately 7 miles. The remaining 1465 miles of roads in the subdivision are compacted dirt, clay or caliche and are approximately 24 feet in width. There are no proposed improvements to the road system. All lots in the subdivision being offered can be reached by conventional automobiles utilizing these roads.

All roads within the subdivision have been dedicated to and accepted for permanent public maintenance by the County of Sandoval. Until early 1975, the Developer maintained all of the roads on a voluntary basis. By agreement in 1975, the County assumed the maintenance of approximately 60% of the roads while the Developer will continue to maintain the remainder of the roads on a voluntary and interim basis.

b. Utilities:

1. Water:

Water is furnished by Albuquerque Utilities Corp., an affiliate of the Developer, to the building areas of Units 7, 11 and 16. The company is a public utility company whose water rates are regulated by the New Mexico Public Service Commission. The water company has indicated that it will service all homes built in those areas where water lines have been extended. The central water system at the present time is not adequate to serve the anticipated population of the entire subdivision. The utility company has not obtained the necessary water utility company franchise rights from the State of New Mexico or the water rights which are necessary for the extension of the central

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water system through the entire subdivision. Therefore, there are no legal assurances as to when the central water system can be expanded by the utility company. However, the Developer believes there is a plentiful supply of water under the subdivision and that the utility company will operate profitably and that, therefore, the utility company will be able to obtain all necessary franchise rights and water rights as and when needed. The Developer intends to cause the utility company to install additional distribution systems in the present and future building areas, and to interconnect utilities between such areas, as the demand arises. A connection charge of $250 for installation and connection of pipes from water main to house is payable by you.

WINTER RATE SCHEDULE FROM OCTOBER 1 TO MARCH 31:

	0-5,000 gal.	$3.75 Minimum
NEXT	20,000 gal.	.25 per/1,000 gal.
NEXT	25,000 gal.	.22 per/1,000 gal.
OVER	50,000 gal.	.19 per/1,000 gal.

SUMMER RATE SCHEDULE FROM APRIL 1 TO SEPTEMBER 30:

	0-5,000 gal.	$3.75 Minimum
NEXT	95,000 gal.	.19 per/1,000 gal.
OVER	100,000 gal.	.17 per/1,000 gal.

A $15.00 meter deposit is required.

If your lot is located in the portions of Units 7, 11 or 16 presently served, you will be required to connect to the central water system. If you own a lot in any other area of the subdivision, you may drill a private well and you will not be required to discontinue the use of your individual system when the utility is provided. Under the regulations of the Environmental Improvement Agency, an individual septic tank many not be used if water is obtained from an individual well unless your lot is at least ¾ acre in size. The aforementioned regulations provide for variances under certain circumstances. However, if your lot is at least ½ acre but less than ¾ acre and is served by a central water system, an individual septic tank may be used. The estimated depth of such wells will range from 400 to 1500 feet, depending upon topography. The cost for drilling a well ranges from $10 to $18 per foot of total depth, which includes drilling, casing and equipping. The Developer estimates the present cost of extending water and overhead electric and telephone lines to the lot furthest from the nearest points currently served, to be approximately $315,000.

2. Electricity:

Electricity is furnished by the Public Service Company of New Mexico to the present building areas. The company is a public utility company regulated by the New Mexico Public Service Commission. The utility company has indicated that it will expand its facilities to serve additional lots as and when houses are constructed thereon subject to its service extension policies. There are no legal assurances that the electric company will expand its facilities. The Developer estimates the present cost of extending water and overhead electric and telephone lines to the lot furthest from the nearest points currently serviced, to be approximately $315,000. The cost of electrical power is as follows:

NET RATE FOR MONTH OR PART THEREOF:

*Overhead System		**Underground System	
First 200 KWH	at 3.0¢	First 200 KWH	at 3.2¢
Next 400 KWH	at 2.6¢	Next 600 KWH	at 2.7¢
Over 600 KWH (Nov-May)	at 1.8¢	Over 800 KWH (Nov-May)	at 1.8¢
Over 600 KWH (Jun-Oct)	at 2.0¢	Over 800 KWH (Jun-Oct)	at 2.0¢

*Service is subject to a $1.60 monthly charge in addition to the above rates.

**Service is subject to a $3.00 monthly charge in addition to the above rates.

These rates are subject to periodic adjustment based on the cost of fuel to the electric company.

There is a $10 meter deposit which is refundable after one year.

3. Gas:

Piped gas is furnished by the Southern Union Gas Company to the building areas of Units 11 and 16. The company is a public utility company regulated by the New Mexico Public Service Commission. The gas company has indicated that it will extend its lines to serve new customers in the areas presently served in accordance with its service extension policies. However, there are no legal assurances that the gas company will so expand its facilities. You pay a $10 security charge plus a $5.20 opening service charge plus $1.35 per foot for the installation of the pipe from the gas main to the house. The Developer has no responsibility regarding the installation of gas facilities. The rate schedule for gas is as follows:

MCF/Month	Basic Rate
First 1,000 Cu. Ft.	$1.80
Next 3,000 Cu. Ft.	.88
Next 6,000 Cu. Ft.	.79
Next 15,000 Cu. Ft.	.69
Next 25,000 Cu. Ft.	.63
Next 50,000 Cu. Ft.	.58
Next 50,000 Cu. Ft.	.52
Excess of 150,000 Cu. Ft.	.45

These rates are subject to periodic adjustment based on the cost of gas to the gas company.

Bottled propane gas is available on request from local suppliers. The present cost for such service, based on a 250-gallon tank, is between 30¢ and 34¢ per gallon with an annual charge of approximately $36 for storage facilities.

4. Telephone:

Telephone service is supplied by the Mountain States Telephone & Telegraph Company to the building areas of Units 11 and 16. The company is a public utility company regulated by the New Mexico Public Service Commission. The telephone company has indicated that it will expand its facilities to serve additional lots as and when houses are constructed thereon, subject to its service extension policies. There are no legal assurances that the telephone company will expand its facilities. The Developer has no responsibilities regarding the installation of telephone facilities. The Developer estimates the present cost of extending water and overhead electric and telephone lines to the lot furthest from the nearest points currently served, to be approximately $315,000.

You may pay an installation charge of no more than $26 depending upon whether or not past service has been initiated. Normally, deposits are not required if a person has established telephone service in the past and/or has good credit. If a deposit is required, the minimum is $50. The rate schedule for telephone service is as follows:

Type of Service	Rio Rancho Estates	Albuquerque
Private Line	$7.55/mo.	$7.55/mo.
Two-Party Line	$6.25/mo.	$6.25/mo.

5. Sewage Disposal:

Sewage disposal is by individual septic tank. Under the regulations of the Environmental Improvement Agency, an individual septic tank may not be used if water is obtained from an individual well unless your lot is at least ¾ acre in size. However, if your lot is at least ½ acre but less than ¾ acre and is served by a central water system, an individual septic tank may be used. The cost of a septic tank ranges from $500 to $900 depending upon size, and is normally included in the price of a home. The local health authorities have generally approved the use of septic tanks in the subdivision. However, until you obtain a satisfactory percolation test on your lot, there is no assurance that you will be able to obtain a permit from the health officials for the installation of a septic tank.

The Developer has made no provision for the installation of a central sanitary sewage system for the lots being offered, nor has the Development made any provision to set aside any money to fund the installation of such a system.

6. Drainage and Flood Control:

No drainage has been or will be required to render any of the lots suitable for construction purposes, other than normal grading, side ditching and the installation of culverts.

7. Television:

Television reception is available to the lots without reception costs.

c. Municipal Services:

1. Fire Protection:

Fire protection is provided by the Rio Rancho Fire Department, a volunteer organization, and has a station house on the property.

2. Police Protection:

Law enforcement and police protection is provided by the Sandoval County Sheriff's Sub-Station located in Rio Rancho Estates.

3. Garbage and Trash Collection:

Garbage and trash collection is furnished by three companies:

A-1 Disposal Services, Inc.
Paradise Services Corp.
General Services Corp.

The approximate cost is as follows:

A-1 Disposal Services, Inc.
    Pickup twice a week—$3.43 per month
Paradise Services Corp.
    Pickup twice a week—$3.50 per month
General Services Corp.
    Pickup twice a week—$3.00 per month

4. Public Schools:

The subdivision is served by two school districts, the Albuquerque School District and the Jemez Springs School District. The Jemez Springs schools are 45 miles from the center of the property. The Albuquerque schools (which all of the school-age residents attend) are the elementary school at Corrales Heights in Rio Rancho Estates, 7¼ miles from the center of the subdivision, and the Taylor Junior High School and the new Cibola High School, 14 and 10 miles, respectively, from the center of the subdivision.

5. Medical and Dental Facilities:

The nearest hospital to the property is located in Albuquerque and is 11 miles from the center of the property. There are 10 hospitals in all, fully staffed, within 25 miles of Rio Rancho Estates. There are numerous doctors and dentists in Albuquerque and a doctor, dentist and osteopath maintain their offices in a professional building located in the subdivision 8 miles from the center of the property. A branch of the Sandoval County Public Health Service with a registered nurse on duty is located on the property. The Lovelace-Bataan Medical Center Northwest Clinic opened in the Spring of 1975. Ambulance service is provided by a number of hospitals and is also available from the Rio Rancho Volunteer Fire Department.

6. Public Transportation:

Public transportation is furnished by the Albuquerque Transit System on its Rio Rancho-Downtown Albuquerque run. Transfers can be made to any other part of the city. Buses leave from the Westside Shopping Plaza located in Rio Rancho Estates 12 times daily for Albuquerque.

7. U.S. Postal Service:

The United States Postal Service currently delivers mail to each home in the residential areas of Rio Rancho Estates. A post office is located within the Westside Shopping Plaza, Rio Rancho Estates shopping center.

11. Will the water supply be adequate to serve the anticipated population of the area?

The Developer believes that it will. The land encompassed by Rio Rancho Estates is underlaid by a sand and gravel deposit known as the Santa Fe Formation. This formation carries the underflow of the Rio Grande River for many miles on each side of the river's channels. In general, water of good quality and adequate supply is available throughout this formation as is evidenced by the municipal water supplies and hundreds of irrigation wells throughout this area which is also known as the Middle Rio Grande Basin. Pumping records indicate that an adequate water supply is available for Rio Rancho Estates as a fully developed community. The municipal water supply of the City of Albuquerque is also obtained from the Santa Fe Formation.

12. Is any drainage of surface water, or use of fill, necessary to make lots suitable for construction of a one-story residential structure? Yes or No? If yes, state whether any provision has been made for drainage or fill and give estimate of any costs buyer would incur.

No.

13. State whether shopping facilities are available in the subdivision. If not, state the distance in miles to such facilities and whether public transportation is available.

Shopping facilities are available in the Westside Shopping Plaza, Rio Rancho Estates' shopping center, located just west of New Mexico Highway 528 and ½ mile north of the Panorama Inn on Southern Boulevard. Innumerable shopping facilities are found in and near Albuquerque and there is a sizeable shopping center located at Corrales, New Mexico, approximately 11 miles from the center of the subdivision and 5 miles from the entrance. The Albuquerque Transit System provides regular bus service on its Rio Rancho Estates-Downtown-Albuquerque run. The fare is $.35 to Downtown Albuquerque.

14. Approximately how many homes were occupied as of April 30, 1975?

There were approximately 1800 occupied residential units in the subdivision.

15. a. State elevation of the highest and lowest lots in the subdivision and briefly describe topography and physical characteristics of the property.

The lots range in elevation from a low of 5,000 feet above sea level to a high of 6,200 feet above sea level. This tract, formerly a cattle ranch, consists of gently rolling range land. The soil is sandy loam and drains well naturally. With an average annual rainfall of just over 8 inches, there is generally insufficient natural moisture to maintain the growth of any but the various native grasses and vegetation, such as: Gamma Grass, Galleta Grass, Buffalo Grass, Pinon Juniper and Sagebrush. Lawns and gardens grow with normal watering.

b. State in inches the average annual rainfall and, if applicable, the average annual snowfall for the subdivision or the area in which it is located.

The average annual rainfall is just over 8 inches.

c. State temperature ranges for summer and winter, including highs, lows and means.

Winter Months	High	I	Mean
December	54		30.0
January	61	13	36.8
February	68	24	43.3
March	76	24	46.7
Summer Months			
June	101	43	75.2
July	97	59	76.1
August	91	52	72.4
September	90	41	68.0

16. Will any subsurface improvement or special foundation work be necessary to construct one story residential or commercial structures on the land? Yes or No? If yes, state if any provision has been made and estimate any costs buyer would incur.

No.

17. State whether there is physical access (by conventional automobile) over legal rights-of-way to all lots and common facilities in the subdivision. State whether the access will be by public or private roads and streets and whether they will be maintained by public or private funds.

There is physical access to all common facilities and to all the lots being offered. See the reply to question 10 of this report for further information on this subject.

18. Has land in the subdivision been platted of record? Yes or No? If not, has it been surveyed? Yes or No? If not, state estimated cost to buyer to obtain a survey.

Yes. All the property being offered has been platted of record.

19. Have the corners of each individual lot been staked or marked so that the purchaser can identify his lot? If not, state the estimated cost to the purchaser to obtain a survey and to have the corners of his lot staked or marked.

Yes. All the lots being offered have been staked for identification.

20. Does the Developer have a program in effect to control soil erosion, sedimentation and flooding throughout the entire subdivision? Yes or No? Describe the program, if any. Has the plan been approved or must be approved by officials responsible for the regulation of land development? Yes or No? Is the Developer obligated to comply with the plan? Yes or No?

No. Erosion and flooding could result in property damage and could create a health and safety hazard. The Developer has not incurred any problems in regard to soil erosion, sedimentation and flooding in the subdivision, but in one of the present building areas, the Developer has constructed water retention dams to control surface runoff.

21. Do the terms of the sales contract attempt to deny the purchaser significant legal remedies against the seller in the event the seller discovers that it cannot convey title to the purchaser's lot?

Yes or No?

Yes, in the event the seller discovers that it cannot convey title to your lot, the sales contract states that the seller will only be obligated to refund the payments made by you and that the contract will then be cancelled. Therefore, the terms of the contract may preclude you from suing the seller for damages incurred as a result of improvements being made to the property, transportation costs thereto, etc.

22. State whether Rio Rancho Estates' Financial Statements have been audited and certified.

No.

23. State whether the Developer has attached to this Property Report the audited and certified Financial Statements of the Parent Company (Amrep Corporation) in lieu of the Financial Statements of the Developer (Rio Rancho Estates, Inc.)

    Yes.

24. State whether Amrep Corporation has executed a guarantee that it will be unconditionally obligated to carry out the obligations of Rio Rancho Estates, Inc., its subsidiary.

    Yes. However, you are advised that the attached financial statements indicate that Amrep Corporation has experienced an operating loss during the last fiscal year.

25. State whether the subdivision or any of the parties involved in the development of the subdivision have been or are parties to disciplinary proceeding, bankruptcies or litigation which may materially affect lot purchasers in this subdivision.

Indictment:

On October 28, 1975, a Federal Grand Jury in the Southern District of New York issued a criminal indictment against Amrep Corporation, Rio Rancho Estates, Inc. and A.T.C. Realty Corp., and seven of its officers, former officers or directors charging violation of the Mail Fraud Act and the Interstate Land Sales Act. It is alleged, among other things, that Amrep defrauded the consumer public of more than $200,000,000 by selling undeveloped semi-arid desert lots at Rio Rancho Estates as a good financial investment; failed to disclose to purchasers that they would not be able to use the lots they purchased and that in order to build, purchasers would have to exercise their exchange privilege which usually resulted in additional cost to the purchaser; and that defendants did not set aside sufficient land so that each lot sold could be exchanged for a lot with utilities. It is also alleged that at present the Developer does not own sufficient water rights to serve Rio Rancho Estates when fully developed; that the defendants utilized an elaborate high-pressure sales campaign which included sending invitations to free dinners where sales presentations designed to induce potential customers to buy lots as a financial investment were made. The indictment further charges that the defendants trained their salesmen to encourage potential customers to sign contracts at the dinners without consulting with lawyers or financial advisors prior to purchasing the land, although the indictment charges, that the information in the Reports and sales contracts which was significant and material to an individual's decision to purchase lots at Rio Rancho Estates was ambiguous, incomplete, inaccurate and incomprehensible to a person of ordinary experience and understanding; that it was misrepresented that lots would appreciate rapidly, that they could be resold at a substantial profit and that there was a master plan for the development of the subdivision. The persons and corporations named in the indictment have entered not guilty pleas and will defend this action.

Civil Litigation:

On March 17, 1975 the Federal Trade Commission issued a Complaint against Amrep Corporation, which is the parent corporation of Rio Rancho Estates, Inc. Such action simply marks the beginning of a formal proceeding in which the allegations of the Complaint will be ruled upon after a hearing. The complaint alleges that Amrep has engaged in unfair methods of competition and unfair and deceptive actions and practices in or affecting commerce. The Complaint charges, among other things, that Amrep has falsely represented: that purchasers must purchase lots immediately or risk being unable to do so; that lots in Rio Rancho are good investments; that the only direction in which the City of Albuquerque, New Mexico can expand is towards Rio Rancho Estates; that jobs for new residents of Rio Rancho are not difficult to obtain; that the market value of lots at Rio Rancho are rising; that the resale of a lot is not difficult and that Rio Rancho will in the near future or at a specifically stated time be usable as homesites with water, electricity and telephone services without extraordinary charges for hookup. The Complaint also alleges: that the contractual provision allowing the Developer to retain any money paid by a defaulting purchaser is unfair; that Amrep solicits the signing of contracts in circumstances where it is unlikely that many purchasers will read or understand the contracts and documents presented; that when purchasers wish to exchange an undeveloped lot for a lot in a developed area as provided by their contract, Amrep uses various means to induce purchasers to exchange their lots for smaller lots and to pay additional money.

Amrep intends to file an Answer denying the allegations of the Complaint and to contest the Complaint at trial. The trial has been tentatively scheduled for March, 1976.

In March, 1975 and subsequent thereto, actions were commenced against Amrep Corporation, and in one case the Developer, and its officers and/or directors in the United States District Court for the Southern District of New York by a stockholder alleging violations of securities laws and claiming to represent himself and certain other stockholders; and by purchasers of property at Rio Rancho Estates alleging violations of the Interstate Land Sales Full Disclosure Act and securities laws and common law on behalf of themselves and all other persons similarly situated in which their allegations relate to and/or are similar to those contained in the Complaint of the Federal Trade Commission. The cases are in preliminary stages. The Developer anticipates that Amrep will contest these actions and that such litigation will be protracted.

The fact that a statement of record with respect to a subdivision has been filed or is in effect, shall not be deemed a finding by the Office of Interstate Land Sales Registration that the statement of record is true and accurate on its face, or be held to mean the Office of Interstate Land Sales Registration has in any way passed upon the merits of, or given approval to, such subdivision.

SPECIAL RISK FACTORS

(a) The future value of land is very uncertain; do NOT count on appreciation.

(b) You may be required to pay the full amount of your obligation to a bank or third party to whom the Developer may assign your contract or note, even though the Developer may have failed to fulfill promises he has made.

(c) Resale of your lot may be subject to the Developer's restrictions, such as limitations on the posting of signs, limitations to the rights of other parties to enter the subdivision unaccompanied, membership prerequisites or approval requirements, or Developer's first right of refusal. You should check your contract for such restrictions, and also note whether your lien or any other liens on the property would affect your right to sell your lot.

(d) You should consider the competition which you may experience from the Developer in attempting to resell your lot and the possibility that real estate brokers may not be interested in listing your lot.

(e) Changing land development and land use regulations by Government agencies may affect your ability to obtain licenses or permits or otherwise affect your ability to use the land.

FINANCIAL STATEMENTS

You should carefully review the attached Financial Statements of the Parent Company of the Developer (see Exhibit "A").

Signature of the Duly Authorized Officer of the Developer.

Mitchell Roberts

May 8, 1975
Date

MITCHELL S. ROBERTS
Vice President (Title)

A 8781

AMREP CORPORATION AND SUBSIDIARIES
Financial Statements

A 8782

AMREP CORPORATION AND SUBSIDIARIES

Consolidated Balance Sheet

April 30, 1975 and 1974

ASSETS	1975	1974
Cash (includes certificates of deposit—1975—$1,921,119; 1974—$1,952,617)	$ 5,227,057	$ 3,878,366
Marketable securities—At cost which approximates market	3,957,164	3,845,632
Contracts receivable on homesite sales, net of unrealized profit (1975—$41,580,450; 1974—$51,000,860)	49,374,681	52,380,267
Mortgages and other receivables	7,351,968	11,246,948
Inventory of land and homes for sale—At cost—		
Land and improvements	17,241,139	27,535,488
Homes	3,346,075	5,482,588
Condominium apartments	6,748,977	9,644,107
Construction and other inventories—At cost	501,515	575,928
Land held for bulk sale	4,584,723	—
Property, plant and equipment—At cost—Net of allowance for depletion and depreciation	18,770,584	19,291,774
Deferred marketing expenses	2,702,542	7,107,369
Other assets	3,008,781	4,539,111
Excess of cost of investments over net assets acquired	5,205,440	5,216,440
	$128,020,646	$150,744,018

See accompanying notes to the financial statements.

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LIABILITIES	1975	1974
Accounts payable and accrued expenses	$ 8,652,380	$ 12,307,450
Mortgages and other notes payable	47,051,296	60,615,786
Customer deposits payable	2,704,598	5,442,023
Estimated liability for future improvements applicable to homesites sold	2,443,800	939,500
Deferred Federal income taxes	21,635,992	23,790,992
6% convertible subordinated debentures—Due 1984	1,488,000	1,869,000
	83,976,066	104,964,751

SHAREHOLDERS' EQUITY	1975	1974
Common stock— $.10 par value		
Authorized—5,000,000 shares		
Issued—3,630,271 shares	363,027	363,027
Capital contributed in excess of par value	14,869,100	14,869,100
Retained earnings	29,880,426	31,589,956
	45,112,553	46,822,083
Treasury stock—At cost—1975—243,687 shares —1974—233,785 shares	(1,067,973)	(1,042,816)
	44,044,580	45,779,267
	$128,020,646	$150,744,018

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AMREP CORPORATION AND SUBSIDIARIES
Consolidated Statement of Income (Loss) and Retained Earnings
Years Ended April 30, 1975 and 1974

	1975	1974
REVENUES		
Homesites	$27,631,493	$52,267,676
Homes and condominium apartments	18,698,716	21,180,231
Distribution of magazines and paperback books	6,385,820	6,617,404
Interest income on homesite contracts receivable	7,190,021	6,997,719
Deferred profit recognized on homesite sales	13,567,131	16,715,342
Profit deferred on homesite sales	(8,839,012)	(21,292,579)
Other income	4,458,990	4,890,547
Gain on sale of mobile home park	—	2,065,583
	69,093,159	89,441,923
COSTS AND EXPENSES		
Cost of sales—		
Homesites	3,681,148	6,531,583
Homes and condominium apartments	14,720,156	17,798,691
Other	1,602,804	1,483,236
Commissions, advertising and other selling	21,760,353	29,041,958
General and administrative	11,865,440	12,853,860
Distribution selling, general and administrative	5,647,036	6,584,887
Loss on cancellations	3,654,451	4,093,591
Interest, net of amounts capitalized ($335,555 in 1975 and $497,013 in 1974)	5,177,262	4,960,461
Writedown of property no longer held for development	4,644,039	—
	72,752,689	83,348,267
INCOME (LOSS) BEFORE INCOME TAXES	(3,659,530)	6,093,656
Provision (credit) for income taxes	(1,950,000)	3,007,000
NET INCOME (LOSS)	(1,709,530)	3,086,656
RETAINED EARNINGS—BEGINNING OF YEAR	31,589,956	28,503,300
RETAINED EARNINGS—END OF YEAR	$29,880,426	$31,589,956
NET INCOME (LOSS) PER COMMON SHARE AND COMMON EQUIVALENT SHARE	($.50)	$.90

See accompanying notes to the financial statements.

AMREP CORPORATION AND SUBSIDIARIES
Consolidated Statement of Changes in Financial Position
Years Ended April 30, 1975 and 1974

	1975	1974
OPERATING CASH RECEIPTS		
Collections on homesite contracts (principal and interest)	$35,394,918	$41,552,961
Home sales, distribution and other receipts	29,2[illegible]23	30,156,484
Proceeds from sale of mobile home park	--	4,465,[illegible]0
	64,644,041	76,174,445
OPERATING CASH EXPENDITURES		
Land development, construction and other costs	20,634,592	17,764,055
Selling, general and administrative expenses	32,023,815	44,255,891
Other expenses, principally interest and loan costs	5,089,481	5,575,504
	57,747,888	67,595,450
EXCESS	6,896,153	8,578,995
Land acquisition, net of related debt and increase in inventory of homes and condominium apartments	(2,141,631)	(10,271,784)
INCREASE (DECREASE) IN CASH FROM OPERATIONS	4,754,522	(1,692,789)
OTHER SOURCES (USES) OF CASH		
Proceeds from loans	—	7,000,000
Payment of mortgages, other notes payable and debentures	(1,105,684)	(2,128,254)
Purchase of treasury stock	(25,157)	(926,731)
Sales (purchases) of marketable securities	(111,532)	982,834
Additions to property, plant and equipment	(2,163,458)	(2,739,354)
INCREASE IN CASH BALANCE	1,348,691	495,706
CASH BALANCE—BEGINNING OF YEAR	3,878,366	3,382,660
CASH BALANCE—END OF YEAR	$ 5,227,057	$ 3,878,366

See accompanying notes to the financial statements.

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AMREP CORPORATION AND SUBSIDIARIES

Notes To The Financial Statements

A—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the Company and its subsidiaries. Significant intercompany accounts and transactions have been eliminated in consolidation.

HOMESITE SALES

The Company sells homesites in communities principally under installment contracts which require payments over an average period of seven years.

Homesite contracts are recorded as sales at the time customers' total payments (principal and interest) amount to at last 10% of the contract price and any refund period has expired. Until a contract qualifies for recording, customer total payments are recorded as deposits. Marketing costs applicable to deposit sales are deferred and charged to income as homesite contracts are recorded as sales.

Income from recorded homesite sales is recognized on the installment basis of accounting. On this basis, the full sales price of a homesite is included in revenues at the time the sale qualifies for recording. Related costs and expenses, consisting of land and improvement costs and marketing expenses, are recorded at the time the sale is recorded. The excess of homesite sales revenues over related costs and expenses is deferred and recognized in income as customers' payments are received, using average profit rates for each community.

Interest on recorded installment contracts is included in income when it is received.

Upon cancellation of a homesite sale, the excess of the unpaid contract balance over related costs of land and improvements and deferred profit is charged to income. The Company's general policy is to cancel contracts on which no payment has been received for approximately four months. Under extenuating circumstances, the Company may extend this delinquency period.

HOME AND CONDOMINIUM APARTMENT SALES

Sales of houses, mobile homes, condominium apartments and related costs and expenses are recorded at the time of closing. Payments received from buyers prior to closing are recorded as deposits.

DISTRIBUTION OF MAGAZINES AND PAPERBACK BOOKS

Revenues from distribution of magazines and paperbacks represent commissions and fees earned from the distribution of publications for client publishers. Such revenues are recorded at the time the publications go on sale. The distribution of publications is generally made on a fully returnable basis which is in accordance with prevailing trade practice. Estimated returns are provided by charges to revenues based upon sales experience.

INVENTORY OF LAND AND HOMES FOR SALE

Land and improvements are stated at cost which include the cost of certain amenities and capitalized interest and real estate taxes. These costs are allocated to individual homesites based upon the total saleable homesites within each community.

Homes and condominium apartments completed or under construction are stated at cost.

PROPERTY, PLANT AND EQUIPMENT

Items capitalized as part of property, plant and equipment, including certain amenities in homesite communities, are valued at cost.

Expenditures for maintenance and repairs and minor renewals are charged to earnings as incurred while those expenditures which improve or extend the estimated useful life of existing properties are capitalized.

Upon sale or other disposition of assets, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss, if any, is reflected in income.

Depreciation and amortization of property, plant and equipment are provided principally on the straight-line method at various rates calculated to amortize the book values of the respective assets over their estimated useful lives. Capitalized costs of discontinued oil and gas operations are being amortized over the estimated recoverable oil and gas reserves

EXCESS OF COST OF INVESTMENTS OVER NET ASSETS ACQUIRED

The excess of cost over the net assets of companies acquired prior to October 31, 1970, is not being amortized as management is of the opinion that there has been no diminution of value of the acquired businesses. This value will be reviewed on a periodic basis and an amortization program will be established if future events make such amortization appropriate. The excess of such cost applicable to acquisitions subsequent to October 31, 1970, is being amortized in accordance with Opinion 17 of the Accounting Principles Board.

FEDERAL INCOME TAXES

The Company and its subsidiaries file consolidated Federal income tax returns. Deferred taxes are provided for the income tax effect of timing differences in reporting transactions for financial and tax purposes. These timing differences result principally from reporting income from homesite sales on a different basis for tax purposes from that used for financial reporting purposes.

B—CONTRACTS RECEIVABLE ON HOMESITE SALES

Homesite contracts receivable bear interest at rates ranging from 5.7% to 8.5% (weighted average 7.07%). At April 30, 1975 approximately 92% of the contracts receivable were current or prepaid.

Estimated collections of principal during the next five years on outstanding contracts receivable, without giving effect to future cancellations, are as follows:

Year to end April 30,	
1976	$21,025,000
1977	19,843,000
1978	17,105,000
1979	12,813,000
1980	10,164,000

Homesite contracts not qualifying for recording at April 30, 1975 and 1974, amounted to $4,761,000 and $15,709,000, respectively. Total receipts on these contracts were $896,000 at April 30, 1975 and $2,663,000 at April 30, 1974.

C—INVENTORY OF LAND AND IMPROVEMENTS

At April 30, 1975 land and improvements comprised:

Projects under development	$16,679,840
Subject to contracts recorded as deposits	561,299
	$17,241,139

D—PROPERTY, PLANT AND EQUIPMENT

	1975	1974
Land, buildings and Improvements	$ 4,866,429	$ 4,870,965
Furniture and fixtures	2,399,642	2,380,889
Automotive and construction equipment	1,463,528	1,680,295
Utility plants and equipment	7,569,096	7,133,127
Motels, rental properties and golf clubhouses and facilities	7,048,262	6,935,606
	23,346,957	23,000,882
Less:		
Allowance for depreciation	5,247,458	4,548,946
	18,099,499	18,451,936
Net book value of oil and gas producing properties and equipment	671,085	839,838
	$18,770,584	$19,291,774

Depreciation and depletion charged to operations amounted to $1,199,074 in 1975 and $1,284,999 in 1974.

E—OTHER ASSETS

	1975	1974
Investment in Trinity Life Insurance Company—at equity	$ 194,928	$ 182,717
Prepaid expenses, deposits, etc.	1,595,134	2,005,585
Deferred charges	1,218,719	2,350,809
	$3,008,781	$4,539,111

F—MORTGAGES AND OTHER NOTES PAYABLE

At April 30, 1975 mortgages and other notes payable comprised:

Notes payable to General Electric Credit Corporation (1)	$37,000,000
Mortgages payable collateralized by land bearing interest at rates from 4% to 8½%	5,924,847
Mortgages payable on buildings, equipment and homes, etc. bearing interest at rates from 6½% to 12%	4,126,449
	$47,051,296

(1) The loan agreement provides for borrowings of up to $40,000,000 which mature on April 30, 1977. Earlier payments on the loan are required when the

F—MORTGAGES AND OTHER NOTES PAYABLE (Continued)

ratio of outstanding loans to eligible contracts receivable, as defined, exceeds 50%. With respect to loans in excess of $30,000,000, bank participation is required to the extent of one-half of such borrowings.

These loans bear interest at 3% over prime rate, limited to a minimum of 8½% and a maximum of 12%, and are collateralized by all homesite contracts receivable and the capital stock of two subsidiaries.

The loan agreement imposes restrictions on certain investments, tangible net worth, consolidated debt, the sale of substantially all assets and properties, mergers, etc. The Company has agreed not to declare or pay cash dividends or purchase shares of its common stock in excess of retained earnings available for such actions, as defined in the loan agreement. At April 30, 1975 approximately $4,400,000 of retained earnings was available for such purposes.

Subsequent to April 30, 1975 the Company prepaid $2,000,000 of this loan.

Payments of principal required on the foregoing mortgages and notes are as follows:

Year to end April 30,	
1976	$ 2,503,070
1977	37,999,152
1978	710,066
1979	723,001
1980	709,001
Thereafter	4,407,006
	$47,051,296

G—ESTIMATED COST OF HOMESITE IMPROVEMENTS

The unexpended cost to complete required improvements to areas from which homesites have been and are presently being sold is estimated to be $15,000,000 of which $2,443,800 relates to homesites sold.

Estimated homesite improvement costs are determined by internal engineering studies of work to be performed and the estimated cost to perform such work, including anticipated cost inflation.

The Company estimates its expenditures for improvement obligations existing at April 30, 1975 will be $1,000,000 annually over the next five years.

H—6% CONVERTIBLE SUBORDINATED DEBENTURES—DUE MAY 1, 1984

The debentures are payable in annual installments of $720,000 on May 1. They are redeemable at any time and are convertible into common stock at $42 per share, subject to anti-dilution provisions. At April 30, 1975 a total of 42,869 shares were reserved for future conversions and exercise of purchase rights attached to the debentures.

In May 1975 the Company purchased $398,000 principal amount of debentures for $278,600.

I—STOCK OPTIONS

At April 30, 1975 options were outstanding to purchase 61,074 shares of common stock at various dates to August 1979. Changes during the two years ended April 30, 1975 in options outstanding are summarized as follows:

	1975	1974
Outstanding—Beginning of year	62,574	72,074
Granted	46,574	2,500
Cancelled	(48,074)	(12,000)
Outstanding—End of year	61,074	62,574

Options are exercisable cumulatively at the rate of 25% annually commencing one year after the date of the grant. The outstanding options were granted at the market price on the date of the grant. At April 30, 1975, 58,050 shares were reserved for future option grants.

J—RETIREMENT PLANS

The Company has retirement plans covering employees meeting the eligibility requirements. Total retirement expense for 1975 and 1974 was $386,195 and $350,782, respectively. The Company's policy is to fund accrued retirement costs.

K—COMMITMENTS AND CONTINGENCIES

At April 30, 1975, the Company is obligated under long-term noncancellable leases for data processing equipment and various real estate properties which expire at various dates to 1982. Certain real estate leases generally provide that the Company will pay for taxes, maintenance, and insurance costs and include renewal options. Rental expense is included in costs and expenses as follows:

	Year Ended April 30,	
	1975	1974
Financing leases	$183,432	$ 227,000
Other leases	660,083	801,000
	$843,515	$1,028,000

The approximate minimum rental commitments for the years subsequent to April 30, 1975 are as follows:

Fiscal Year Ending In	Total	Financing Leases Data Processing Equipment	Other Leases Real Estate
1976	$ 714,738	$165,030	$ 549,708
1977	600,659	136,602	464,057
1978	403,450	29,310	374,140
1979	283,159	—	283,159
1980	126,686	—	126,686
1981-1982	64,024	--	64,024
	$2,192,716	$330,942	$1,861,774

The present value (determined by using assumed interest rates of 9 % to 13%) of the minimum rental commitments for the noncapitalized financing leases amounted to approximately $296,000 at April 30, 1975. If all noncapitalized financing leases were capitalized, the difference in the computed amortization and interest cost, and the related rent expense, would have an effect on net income for the year ended April 30, 1975, of less than 3% of the average net income for the most recent three years.

L—WRITEDOWN OF PROPERTY NO LONGER HELD FOR DEVELOPMENT

This writedown consists of the following:

Santa Fe, New Mexico, project	$1,923,781 (1)
Eloy, Arizona, project	1,216,059 (2)
Taney County, Missouri, project	1,234,030 (3)
Other	270,169
	$4,644,039

(1) In April 1975, the Company reduced the carrying value of approximately 16,600 acres of its development project at Santa Fe. This reduction was based upon a determination that development of the entire parcel approximating 26,600 acres was no longer feasible because of the Company's inability to obtain the necessary approvals by county officials consistent with its master plan for the development.

(2) In April 1975, the Company reduced the carrying value of its property in Eloy, Arizona (a project not under development), based on a determination that its subdivision and development would be uneconomical.

(3) Since June, 1971, the Company has operated a recreational development located in Taney County, Missouri under an agreement with the Trustee of an unrelated predecessor developer. In April, 1975, in accordance with such agreement, the Company reconveyed to the Trustee unsold land, building, leisure facilities and personal property and were thereby released from a $3,100,000 promissory note. Such reconveyance and release is subject to approval of the United States District Court for the Western District of Missouri. The excess of the Company's carrying value of this project over the cancelled debt has been charged to operations.

M—PROVISION (CREDIT) FOR INCOME TAXES

The provision (credit) for income taxes consists of the following:

	1975	1974
Federal — Current	$ 180,000	$
— Deferred	(2,155,000)	3,007,000
State	25,000	
	$(1,950,000)	$3,007,000

The current provision for Federal income taxes has been reduced by investment creditsof $192,000.

The Company's Federal income tax returns for the years ended April 30, 1972, 1973 and 1974 are currently under review by the Internal Revenue Service. The Company is of the opinion that no additional Federal income tax assessments will result from this examination.

N—LITIGATION

(1) On March 17, 1975, the Federal Trade Commission served a complaint on the Company seeking an order directing the Company to cease and desist from various enumerated sales practices; to include in its promotional materials and contracts certain disclosures and statements; and to modify certain provisions of the contracts pursuant to which the lots are sold and have been sold. The Company has interposed an answer denying the material allegations of the complaint and has asserted various affirmative defenses including the defense that the Federal Office of Interstate Land Sales has primary jurisdiction over the subject matter of the action. The

N—LITIGATION

(1) (Continued)

Company believes that it has good and meritorious defenses to the action. The FTC has reserved its right to bring an action for restitution but no such action is presently pending, nor can it be commenced until, unless and only if a final cease and desist order issues.

(2) On or about March 19, 1975, an action was commenced against the Company, certain of its officers and directors, in the United States District Court for the Southern District of New York by an individual who claims to be a stockholder of the Company and also claims to represent himself and certain other present and former stockholders of the Company. The complaint alleges that the Company's failure to make appropriate disclosures of various matters alleged by the Federal Trade Commission in its complaint and to properly reflect the consequences thereof in the Company's financial statements, constituted violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Plaintiff seeks an accounting for the damages sustained and also punitive damages. The Company believes this complaint appears to rely upon the allegations in the complaint of the Federal Trade Commission and that it has good and meritorious defenses to the action.

On July 15, 1975 this complaint was dismissed with leave to replead.

(3) The U. S. Attorney for the Southern District of New York, before a Grand Jury, is investigating matters relating to the Company's development at Rio Rancho.

The Company has no knowledge of what actions, if any, the Grand Jury may take upon completion of the investigation, or whether any actions taken will result in any liability on the part of the Company or have any material adverse impact on the Company's business. The Company believes that it has conducted its business in compliance with applicable laws and regulations.

O—EARNINGS (LOSS) PER SHARE

Earnings (loss) per common share and common equivalent share is based on the weighted average number of common shares outstanding during each year. For this computation, outstanding shares were adjusted to reflect as common equivalent shares, the assumed exercise of certain stock options.

No dilution of earnings (loss) per share results from the assumed conversion of the 1984 debentures and exercise of related purchase rights and other outstanding options.

Accountant's Report

BOARD OF DIRECTORS AND SHAREHOLDERS
AMREP CORPORATION

We have examined the consolidated balance sheet of AMREP CORPORATION AND SUBSIDIARIES at April 30, 1975 and 1974 and the related consolidated statements of income (loss) and retained earnings and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and,accordingly,included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As described in Note N, the Company has been served with a complaint by the Federal Trade Commission which alleges violations of the Federal Trade Commission Act, and has been named as a defendant in a class action lawsuit which alleges violations of the Securities Exchange Act of 1934. The outcome of these actions is not presently determinable.

In our opinion, subject to the effect, if any, of the matters referred to in the preceding paragraph, these financial statements present fairly the consolidated financial position of AMREP CORPORATION AND SUBSIDIARIES at April 30, 1975 and 1974 and the results of their operations and changes in financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

J. K. LASSER & COMPANY

New York, New York
June 19, 1975
July 15, 1975 as to Note N(2)

SCHEDULE A

DESCRIPTION OF LANDS

Plats of Rio Rancho Estates recorded in the Office of the County Clerk of Sandoval County, New Mexico, Rio Rancho Estates Plat Book 1.

UNIT	PLAT PAGE	NO. OF LOTS
1	23 thru 26, 61, 1B	3,527
2	19 thru 22, 61. 1B	3,381
3	5, 6, 17, 18, 126	2,538
4	2, 3, 7, 8, 64, 1B	2,658
5	27 thru 29, 61, 64, 1C, 76	3,020
6	31 thru 34, 61, 1E	3,437
7	37 thru 39, 54, 55, 1E, 69, 70, 104	3,488
8	9, 40, 41, 45, 46, 63, 90	3,623
9	10, 11, 15, 16, 63, 64, 1B	2,302
10	4, 12, 14, 73 thru 75	2,965
11	35, 36, 50, 58 thru 60, 63, 64, 66, 72, 89, 106, 114, 116 thru 118, 124, 137	4,676
12	47, 52A, 53, 56A, 57A, 67, 71, 72, 76, 77, 90, 105, 125	3,482
13	44, 48, 49, 51A, 63, 69 thru 72, 77, 87, 88, 90, 98, 106, 107	5,069
16	1, 1A, 1D, 13A, 42A, 43A, 62 thru 65, 68, 1E, 70, 76, 78, 90	3,320
17	79 thru 86, 90, 95, 107, 125	4,492

Plats of Rio Rancho Estates recorded in the Office of the County Clerk of Sandoval County, New Mexico, Rio Rancho Estates Plat Book 2.

UNIT	PLAT PAGE	NO. OF LOTS
20	32, 33, 37 thru 40, 42, 58 thru 65, 68	7,186
21	8, 11, 12, 26, 31, 35, 39, 42	4,625
22	3, 4, 6, 7, 9, 10, 16, 26, 39, 57, 66, 67	4,761
23	1, 2, 5, 13, 14, 17, 18, 26, 30, 36, 38, 56	6,007
24	15, 19, 24, 25, 27 thru 30, 36, 39, 55, 68	6,179
25	34, 42, 48 thru 54	5,810
26	20 thru 23, 36, 39, 41, 43 thru 47	7,983

B/A=Building Area

SCHEDULE A

A 8793

RIO RANCHO ESTATES
PLAT BOOK No. 1

PAGE No.	DESCRIPTION	FILING DATE
1	PORTION OF UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, B/A Block 11, (lots 1 thru 21) B/A Block 12, (lots 1 thru 21) & (lots 58 thru 78) B/A Block 13, (lots 1 thru 21) & (lots 58 thru 78) B/A Block 14, (lots 1 thru 21) & (lots 58 thru 78) B/A Block 15, (lots 1 thru 21) & (lots 58 thru 78) B/A Block 16, (lots 1 thru 21) & (lots 58 thru 78) B/A Block 17, (lots 58 thru 78) B/A Block 18, (lots 1 thru 36) & (43, 44, 45) & (59, 60, 61) (68 thru 103) B/A Block 19, (lots 1 thru 34) (40, 41, 42, 43) (58, 59, 60) & (66 thru 99) B/A Block 20, (lots 1 thru 33) (39, 40, 41) & (65 thru 97) B/A Block 21, (lots 1 thru 30) (36, 37, 38) (57 & 58) & (64 thru 93) B/A Block 22, (lots 1, 2, & 3)	Dec. 5, 1961
1A	REPLAT OF A PORTION OF UNIT SIXTEEN RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, B/A Block 18, (lots 104 thru 107) B/A Block 19, (lots 100 thru 102) B/A Block 20, (lots 98 thru 104) B/A Block 21, (lots 94 thru 98) B/A Block 22, (lots 21 thru 37) B/A Block 23, (lots 1 thru 7) B/A Block 24, (lots 1 thru 6) B/A Block 25, (lots 1 thru 22) Amendment of Tract "A"	July 26, 1962
1B	REPLAT OF LOTS WITHIN UNITS ONE, TWO, FOUR AND NINE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 1, Block 21, (lot 203) lot 70 was replatted as lot 203 Unit 2, Block 20, (lots 1, 2, & 3) Unit 2, Block 38, (lots 25, 38, & 39) Unit 2, Block 39, (lots 37, 38, 39, 40, & 22) Unit 2, Block 40, (lots 37, 38, 39, 40) (& lot 16) Unit 2, Block 41, (lots 37, 38, 39, & 40) Unit 4, Block 14, (lots 295 & 296) Unit 4, Block 25, (lots 136 & 137) replat of lots 17 & 18 Unit 4, Block 70, (lots 29, & 30) replat of lots 13 & 14 Unit 4, Block 22, (lots 22 & 23) replat of lots 1 & 21 Unit 4, Block 32, (lot 62) replat of lot 4 Unit 9, Block 31, (lot 144) replat of lot 137	July 26, 1962
1C	N.E. Portion of Unit Five Unit 5, Block 41, (lots 1 thru 37 & 175 thru 181) Block 54, (lots 1 thru 8, lot 29, & 268 thru 273) Block 63, (lots 1 thru 34) Block 64, (lots 1 thru 22) Block 65, (lots 1 thru 24) Block 66, (lots 1 thru 60) Block 67, (lots 1 thru 43) Block 68, (lots 11 thru 53) Block 69, (lots 1 thru 24) Block 70, (lots 7 thru 78 & 80 thru 87, & 92 thru 96) Block 71, (lots 1 thru 10) Block 72, (lots 1 thru 24) Block 73, (lots 1 thru 26) Block 74, (lots 1 thru 24) Block 75, (lots 1 thru 28) Block 76, (lots 1 thru 23) Block 77, (lots 1 thru 47) Block 78, (lots 1 thru 57) Block 79, (lots 1 thru 74) Blocks 80, 81, 82, & 83, (lots 1 thru 74 each block) Block 84, (lots 1 thru 5) Block 85, (lots 1 thru 19) Block 86, (lots 1 thru 25) REPLAT OF THE N.E. PORTION OF UNIT FIVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	October 19, 1962
1D	Second replat of a Portion of Unit Sixteen Unit 16, B/A Block 18, (lots 108 thru 117) B/A Block 19, (lots 103 thru 110) B/A Block 20, (lots 105 thru 110) B/A Block 21 (lots 99 thru 105) SECOND REPLAT OF A PORTION OF UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	April 22, 1963
1E	Replat of lots within Units Six, Seven, & Sixteen Unit 6, Block 9, (lot 478) & (lot 1) Unit 6, Block 10, (lots 85 & 86) & (lot 1) Unit 7, Block 18, (lots 11 & 12) Unit 7, Block 39, (lots 1 & 45) Unit 7, Block 39, (lots 23 & 24) B/A Unit 16, Block 20, (lots 111 & 112) B/A Unit 16, Block 24, (lots 9 East & 9 West REPLAT OF LOTS WITHIN UNITS SIX, SEVEN AND SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Nov. 5, 1963
2	S.E. Portion of Unit Four Unit 4, Block 31, (lots 1 thru 78) Block 32, (lots 1, 2, 3, & 5 thru 61) Block 33, (lots 1 thru 14) Block 34, (lots 1 thru 17) Block 35, (lots 1 thru 13) Block 36, (lots 1 thru 82) Block 37, (lots 1 thru 13) Block 38, (lots 1 thru 16) Block 39, (lots 1 thru 10) Block 40, (lots 1 thru 10) Block 41, (lots 1, 2, & 4 thru 9) Block 42, (lots 1 thru 7) Block 43, (lots 1 thru 12) Block 44, (lots 1 thru 9) Block 45, (lots 1 thru 25) S.E. PORTION OF UNIT FOUR, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 7, 1961
3	N.E. Portion of Unit Four Unit 4, Block 1, (lots 1 thru 9) Block 2, (lots 1 thru 6) Block 3, (lots 1 thru 34) Block 4, (lots 1 thru 41) Block 5, (lots 1 thru 43) Block 6, (lots 1 thru 47) Block 7, (lots 1 thru 51) Block 8, (lots 1 thru 65) Block 9, (lots 1 thru 71) Block 10, (lots 1 thru 72) Block 11, (lots 1 thru 64) Block 12, (lots 1 thru 56) Block 13, (lots 1 thru 48) Block 14, (lots 1 thru 88) Block 15, (lots 1 thru 14) Block 16, (lots 1 thru 20) Block 17, (lots 1 thru 35) Block 18, (lots 1 thru 37) Block 19, (lots 1 thru 43) Block 20, (lots 1 thru 27) Block 21, (lots 1 thru 21) Block 22, (lots 2 thru 20) Block 23, (lots 1 thru 28) Block 24, (lots 1 thru 35) Block 25, (lots 1 thru 16 & 19 thru 88) Block 26, (lots 1 thru 10) Block 27, (lots 1 thru 11) Block 28, (lots 1 thru 10) Block 29, (lots 1 thru 10) Block 30, (lots 1 thru 12) N.E. PORTION OF UNIT FOUR, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 7, 1961
4	Portion of Unit Ten Unit 10, Block 1, (lots 1 thru 80) Block 2, (lots 1 thru 38) Block 3, (lots 1 thru 20) Block 4, (lots 1 thru 3 & 6 & 7) Block 5, (lots 1 thru 39 & 57 thru 65) Block 6, (lots 1 thru 40) Block 7, (lots 1 thru 20) PORTION OF UNIT TEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 7, 1961
5	N.E. Portion of Unit Three Unit 3, Block 1, (lots 1 thru 72) Block 2, (lots 1 thru 62) Block 3, (lots 1 thru 46) Block 4, (lots 1 thru 72) Block 5, (lots 1 thru 72) Block 6, (lots 1 thru 65) Block 7, (lots 1 thru 62) Block 8, (lots 1 thru 72) Block 9, (lots 1 thru 72) Block 10, (lots 1 thru 62) Block 11, (lots 1 thru 47) Block 12, (lots 1 thru 72) Block 13, (lots 1 thru 72) Block 14, (lots 1 thru 59) Block 15, (lots 1 thru 50) Block 16, (lots 1 thru 64) Block 17, (lots 1 thru 59) Block 18, (lots 1 thru 42) Block 19, (lots 1 thru 42) Block 20, (lots 1 thru 32) Block 21, (lots 1 thru 32) Block 22, (lots 1 thru 32) N.E. PORTION OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 7, 1961
6	N.W. Portion of Unit Three Unit 3, Block 23, (lots 1 thru 33) Block 24, (lots 1 thru 34)	Dec. 7, 1961

Continued on next page

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RIO RANCHO ESTATES
PLAT BOOK No. 1

PAGE No.	DESCRIPTION	FILING DATE
6	Block 25, (lots 1 thru 34) Block 26, (lots 1 thru 33) Block 27, (lots 1 thru 34) Block 28, (lots 1 thru 33) Block 29, (lots 1 thru 28) Block 30, (lots 1 thru 21) Block 31, (lots 1 thru 14) Block 32, (lots 1 thru 32) Block 33, (lots 1 thru 90) Block 34, (lots 1 thru 10) Block 35, (lots 1 thru 13) Block 36, (lots 1 thru 18) Block 37, (lots 1 thru 23) Block 38, (lots 1 thru 30) Block 39, (lots 1 thru 6) Block 40, (lots 1 thru 11) Block 41, (lots 1 thru 15) Block 42, (lots 1 thru 21) Block 43, (lots 1 thru 26) Block 44, (lots 1 thru 31) Block 45, (lots 1 thru 38) Block 46, (lots 1 thru 43) Block 47, (lots 1 thru 38) N.W. PORTION OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	
7	N.W. Portion of Unit Four Unit 4, Block 14, (lots 89 thru 237 & 242 thru 256 & 259 thru 294 Block 25, (lots 89 thru 135) Block 46, (lots 1 thru 18) Block 47, (lots 1 thru 10) Block 48, (lots 1 and 2) Block 49, (lots 1 thru 22) Block 50, (lots 1 thru 30) Block 51, (lots 1 thru 30) Block 52, (lots 1 thru 40) Block 53, (lots 1 thru 40) Block 54, (lots 1 thru 40) Block 55, (lots 1 thru 40) Block 56, (lots 1 thru 30) Block 57, (lots 1 thru 8) Block 58, (lots 1 thru 14) Block 59, (lots 1 thru 12) Block 60, (lots 1 thru 22) Block 61, (lots 1 thru 22) N.W. PORTION OF UNIT FOUR, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Jan. 31, 1962
8	S.W. Portion of Unit Four, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 4, Block 36, (lots 83 thru 176) Block 62, (lots 1 thru 17) Block 63, (lots 1 thru 8) Block 64, (lots 1 thru 4) Block 65, (lots 1 thru 26) Block 66, (lots 1 thru 38) Block 67, (lots 1 thru 38) Block 68, (lots 1 thru 41) Block 69, (lots 1 thru 21) Block 70, (lots 1 thru 12 & 15 thru 28) Block 71, (lots 1 thru 62) Block 72, (lots 1 thru 13) Block 73, (lots 1 thru 19) Block 74, (lots 1 thru 18) Block 75, (lots 1 thru 46) Block 76, (lots 1 thru 6) Block 77, (lots 1 thru 12) Block 78, (lots 1 thru 18) Block 79, (lots 1 thru 16)	Jan. 31, 1962
9	S.W. Portion of Unit Eight Unit 8, Block 1, (lots 1 thru 35) Block 2, (lots 1 thru 64) Block 3, (lots 1 thru 58) Block 4, (lots 1 thru 54) Block 5, (lots 1 thru 48) Block 6, (lots 1 thru 44) Block 7, (lots 1 thru 38) Block 8, (lots 1 thru 32) Block 9, (lots 1 thru 70) Block 10, (lots 1 thru 37) Block 11, (lots 1 thru 7) Block 12, (lots 1 thru 43) Block 13, (lots 1 thru 39) Block 14, (lots 1 thru 37) Block 15, (lots 1 thru 34) Block 16, (lots 1 thru 31) Block 17, (lots 1 thru 29) Block 18, (lots 1 thru 13) S.W. PORTION OF UNIT EIGHT, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Jan. 31, 1962
10	N.E. Portion of Unit Nine Unit 9, Block 1, (lots 1 thru 92) Block 2, (lots 1 thru 90) Block 3, (lots 1 thru 90) Block 4, (lots 1 thru 86) Block 5, (lots 1 thru 86) Block 6, (lots 1 thru 44) Block 7, (lots 1 thru 43) Block 8, (lots 1 thru 36) Block 9, (lots 1 thru 5) Block 10, (lots 1 thru 9) Block 11, (lots 1 thru 8) Block 12, (lots 1, 2, & 3) Block 13, (lots 1 thru 59) Block 14, (lots 1 thru 40) Block 15, (lots 1 thru 10) Block 16, (lots 1 thru 20) Block 17, (lots 1 thru 8) Block 18, (lots 1 thru 16) Block 19, (lots 1 thru 18) Block 20, (lots 1 thru 16) Block 21, (lots 1 thru 10) Block 36, (lots 62 thru 84) N.E. PORTION OF UNIT NINE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT; SANDOVAL COUNTY, NEW MEXICO	Jan 31 1962
11	N.W. Portion of Unit Nine Unit 9, Block 23, (lots 1 thru 7) Block 24, (lots 1 thru 11) Block 25, (lots 1 thru 17) Block 26, (lots 1 thru 19) Block 27, (lots 1 thru 11) Block 28, (lots 1 thru 10) Block 29, (lots 2 thru 9) Block 30, (lots 1 thru 18) Block 31, (lots 1 thru 39 & 45 thru 136 & 138 thru 143) Block 32, (lots 1 thru 4) Block 33, (lots 1 thru 16) Block 34, (lots 1 thru 24) Block 35, (lots 1 thru 32) Block 36, (lots 1 thru 61) Block 37, (lots 1 thru 52) Block 38, (lots 1 thru 20) Block 39, (lots 1 thru 27) Block 40, (lots 1 thru 34) Block 41, (lots 1 thru 38) Block 42, (lots 1 thru 41) Block 43, (lots 1 thru 26) Block 44, (lots 1 thru 5) Block 45, (lots 1 thru 28) Block 46, (lots 1 thru 14) Block 47, (lots 1 thru 34) Block 48, (lots 1 thru 56) Block 49, (lots 1 thru 80) N.W. PORTION OF UNIT NINE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Jan. 31, 1962
12	Portion of Unit Ten Unit 10, Block 22, (lots 1 thru 36) Block 23, (lots 1 thru 36) Block 24, (lots 1 thru 36) Block 25, (lots 1 thru 28) Block 26, (lots 1 thru 36) Block 27, (lots 1 thru 10) Block 28, (lots 1 thru 25) Block 29, (lots 1 thru 4) PORTION OF UNIT TEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Jan. 31, 1962
13	ALL REPLATTED TO UNIT SIXTEEN, see page 13A	Jan. 31, 1962
13A	Southwesterly Portion of Unit Sixteen Unit 16, Block 59, (lots 1 thru 64) Block 60, (lots 1 thru 54) Block 61, (lots 1 thru 45) Block 62, (lots 1 thru 55) Block 63, (lots 1, 2, & 3) Block 64, (lots 1 thru 68) Block 65, (lots 1 thru 32) Block 66, (lots 1 thru 45) Block 67, (lots 1 thru 4) Block 68, (lots 1 thru 11) Block 69, (lots 1 thru 16) Block 70, (lots 1 thru 17) SOUTHWESTERLY PORTION OF UNIT SIXTEEN, BLOCKS 59 THRU 70, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY NEW MEXICO	May 26, 1964
14	Portion of Unit Ten Unit 10, Block 8, (lots 1 thru 46) Block 9, (lots 1 thru 36) Block 10, (lots 1 thru 22) Block 11, (lots 1 thru 5)	Jan. 31, 1962

Continued on next page

A 8795

RIO RANCHO ESTATES
PLAT BOOK No. 1

RIO RANCHO ESTATES
PLAT BOOK No. 1

PAGE No.	DESCRIPTION	FILING DATE
14	Block 12, (lots 1 thru 22) Block 13, (lots 1 thru 22) Block 14, (lots 1 thru 19) Block 15, (lots 1 thru 28) Block 16, (lots 1 thru 15) Block 17, (lots 1 thru 5) Block 18, (lots 1 thru 13) Block 19, (lots 1 thru 14) Block 20, (lots 1 thru 7) Block 21, (lots 1 thru 25) PORTION OF UNIT TEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	
15	S.W. Portion of Unit Nine Unit 9, Block 61, (lots 1 thru 21) Block 62, (lots 1 thru 23) Block 63, (lots 1 thru 6) Block 64, (lots 1 thru 74) Block 65, (lots 1 thru 17) Block 66, (lots 1 thru 17) Block 67, (lots 1 thru 13) Block 68, (lots 1 thru 12) Block 69, (lots 1 thru 30) Block 70, (lots 1 thru 30) Block 71, (lots 1 thru 30) Block 72, (lots 1 thru 30) S.W. PORTION OF UNIT NINE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
16	S.E. Portion of Unit Nine Unit 9, Block 12, (lots 4 & 5) Block 13, (lot 60) Block 22, (lots 9 thru 14) Block 50, (lots 1 thru 94) Block 51, (lots 1 thru 16) Block 52, (lots 1 thru 18) Block 53, (lots 1 thru 20) Block 54, (lots 1 thru 23) Block 55, (lots 1 thru 26) Block 56, (lots 1 thru 26) Block 57, (lots 1 thru 24) Block 58, (lots 1 thru 28) Block 59, (lots 1 thru 18) Block 60, (lots 1 thru 18) S.E. PORTION OF UNIT NINE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
17	S.E. Portion of Unit Three Unit 3, Block 18, (lots 43 thru 120) Block 59, (lots 1 thru 25) Block 60, (lots 1 thru 21) Block 61, (lots 1 thru 18) Block 62, (lots 1 thru 12) Block 63, (lots 1 thru 5) Block 64, (lots 1 thru 21) Block 65, (lots 1 thru 10) Block 66, (lots 1 thru 4) Block 67, (lots 1 thru 22) Block 68, (lots 1 thru 22) Block 69, (lots 1 thru 22) Block 70, (lots 1 thru 22) Block 71, (lots 1 thru 7) S.E. PORTION OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
18	S.W. Portion of Unit Three Unit 3, Block 48, (lots 1 thru 14) Block 49, (lots 1 thru 26) Block 50, (lots 1 thru 25) Block 51, (lots 1 thru 28) Block 52, (lots 1 thru 28) Block 53, (lots 1 thru 28) Block 54, (lots 1 thru 28) Block 55, (lots 1 thru 28) Block 56, (lots 1 thru 29) Block 57, (lots 1 thru 30) Block 58, (lots 1 thru 30) S.W. PORTION OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
19	S.E. Portion of Unit Two Unit 2, Blocks 1 thru 7, (lots 1 thru 80 each block) Blocks 8 and 9, (lots 1 thru 74 each block) Block 10, (lots 1 thru 68) Blocks 11 thru 13, (lots 1 thru 60 each block) Block 14, (lots 1 thru 56) Block 15, (lots 1 thru 62) Block 16, (lots 1 thru 61) Blocks 17 thru 19, (lots 1 thru 60 each block) Block 20, (lots 4 thru 57) S.E. PORTION OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
20	S.W. Portion of Unit Two Unit 2, Block 21, (lots 1 thru 21) Block 22, (lots 1 thru 22) Block 23, (lots 1 thru 18) Block 24, (lots 1 thru 18) Block 25, (lots 1 thru 32) Block 26, (lots 1 thru 28) Block 27, (lots 1 thru 30) Block 28, (lots 1 thru 32) Block 29, (lots 1 thru 31) Block 30, (lots 1 thru 29) Block 31, (lots 1 thru 32) Block 32, (lots 1 thru 34) Block 33, (lots 1 thru 36) Block 34, (lots 1 thru 36) Block 35, (lots 1 thru 36) Block 36, (lots 1 thru 34) Block 37, (lots 1 thru 37) Block 38, (lots 1 thru 24 & 27 thru 37) Block 39, (lots 1 thru 13 & 15 thru 21 & 24 thru 36) Block 40, (lots 1 thru 14 & 17 thru 20 & 22 thru 36) Block 41, (lots 1 thru 16 & lot 18 & 20 thru 36) S.W. PORTION OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
21	N.W. Portion of Unit Two Unit 2, Block 48, (lots 1 thru 109 & 147 thru 159) Block 66, (lots 1 thru 26) Block 67, (lots 1 thru 34) Block 68, (lots 1 thru 34) Block 69, (lots 1 thru 37) Block 70, (lots 1 thru 38) Block 71, (lots 1 thru 38) Block 72, (lots 1 thru 38) Block 73, (lots 1 thru 37) Block 74, (lots 1 thru 38) Block 75, (lots 1 thru 37) Block 76, (lots 1 thru 20) Block 77, (lots 1 thru 19) Block 78, (lots 1 thru 18) Block 79, (lots 1 thru 18) Block 80, (lots 1 thru 15) Block 81, (lots 1 thru 11) Block 82, (lots 1 thru 6) Block 83, (lots 1 thru 15) Block 84, (lots 1 thru 25) Block 85, (lots 1 thru 21) Block 86, (lots 1 thru 17) N.W. PORTION OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
22	N.E. Portion of Unit Two Unit 2, Block 42, (lots 1 thru 6 & 13 thru 24) Block 43, (lots 1 thru 24) Block 44, (lots 1 thru 22) Block 45, (lots 1 thru 21) Block 46, (lots 1 thru 12) Block 47, (lots 1 thru 12) Block 48, (lots 110 thru 146 & 160 thru 273) Block 49, (lots 1 thru 8) Block 50, (lots 1 thru 12) Block 51, (lots 1 thru 34) Block 52, (lots 1 thru 26) Block 53, (lots 1 thru 19) Block 54, (lots 1 thru 14) Block 55, (lots 1 thru 12) Block 56, (lots 1 thru 40) Block 57, (lots 1 thru 40) Block 58, (lots 1 thru 38) Block 59, (lots 1 thru 38) Block 60, (lots 1 thru 36) Block 61, (lots 1 thru 13) Block 62, (lots 1 thru 11) Block 63, (lots 1 thru 19) Block 64, (lots 1 thru 23) Block 65, (lots 1 thru 24) N.E. PORTION OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
23	S.E. Portion of Unit One Unit 1, Block 21, (lots 83 thru 202) Block 51, (lots 1 thru 15) Block 52, (lots 1 thru 11) Block 53, (lots 1 thru 35) Block 54, (lots 1 thru 30) Block 55, (lots 1 thru 18) Block 56, (lots 1 thru 14) Block 57, (lots 1 thru 16) Block 58, (lots 1 thru 17) Block 59, (lots 1 thru 17) Block 60, (lots 1 thru 15) Block 61, (lots 1 thru 19)	May 18, 1962

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PAGE No.	DESCRIPTION	FILING DATE
19	Block 62, (lots 1 thru 23) Block 63, (lots 39 thru 155) Block 64, (lots 1 thru 11) Block 65, (lots 1 thru 11) Block 66, (lots 1 thru 14) Block 67, (lots 1 thru 13) Block 68, (lots 1 thru 11) Block 69, (lots 1 thru 10) Block 70, (lots 1 thru 7) Block 71, (lots 1 thru 10) Block 72, (lots 1 thru 13) Block 73, (lots 1 thru 17) Block 74, (lots 1 thru 37) Block 75, (lots 1 thru 38) Block 76, (lots 1 thru 38) S.E. PORTION OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	
24	S.W. Portion of Unit One Unit 1, Block 63, (lots 1 thru 38) Block 77, (lots 1 thru 21) Block 78, (lots 1 thru 20) Block 79, (lots 1 thru 14) Block 80, (lots 1 thru 34) Blocks 81, 82, 83, 84, 85, 86, (lots 1 thru 34 each block) Block 87, (lots 1 thru 40) Block 88, (lots 1 thru 15) Block 89, (lots 1 thru 23) Block 90, (lots 1 thru 18) Block 91, (lots 1 thru 20) Block 92, (lots 1 thru 30) Block 93, (lots 1 thru 39) Block 94, (lots 1 thru 40) Block 95, (lots 1 thru 11) Block 96, (lots 1 thru 40) Block 97, (lots 1 thru 24) Block 98, (lots 1 thru 34) Block 99, (lots 1 thru 40)	May 18, 1962
25	N.W. Portion of Unit One Unit 1, Blocks 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10 (lots 1 thru 68 each) Blocks 11, 12, 13, 14, & 15 (lots 1 thru 78 each) Block 16, (lots 1 thru 55) Block 17, (lots 1 thru 40) Block 18, (lots 1 thru 32) Block 19, (lots 1 thru 16) Block 20, (lots 1 thru 7) Block 21, (lots 1 thru 69 & 71 thru 82) Block 22, (lots 1 thru 11) Block 23, (lots 1 thru 20) Block 24, (lots 6 thru 25) Block 25, (lots 1 thru 38) N.W. PORTION OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
26	N.E. Portion of Unit One Unit 1, Blocks 26 & 27 (lots 1 thru 38 each) Block 28, (lots 1 thru 37) Block 29, (lots 1 thru 31) Block 30, (lots 1 thru 29) Block 31, (lots 1 thru 27) Block 32, (lots 1 thru 25) Block 33, (lots 1 thru 23) Block 34, (lots 16 thru 31) Block 35, (lots 1 thru 41) Block 36, (lots 1 thru 5) Block 37, (lots 1 thru 8) Block 38, (lots 1 thru 10) Block 39, (lots 1 thru 22) Block 40, (lots 1 thru 51) Block 41, (lots 1 thru 25) Blocks 42, 43, 44, 45, 46, & 47 (lots 1 thru 26 each) Block 48, (lots 1 thru 36) Block 49, (lots 1 thru 33) Block 50, (lots 1 thru 30) N.E. PORTION OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 18, 1962
27	S.W. Portion of Unit Five Unit 5, Blocks 1, 2, 3, & 4, (lots 1 thru 28 each) Block 5, (lots 1 thru 14) Block 6, (lots 1 thru 16) Block 7, (lots 1 thru 27) Block 8, (lots 1 thru 27) Block 9, (lots 1 thru 10) Block 10, (20.92 acres undivided) Block 11, (lots 1 & 2 and 15 thru 28) Block 12, (lots 1 thru 28) Block 13, (lots 1 thru 26) Block 14, (lots 1 thru 8) Block 15, (lots 1 thru 14) Block 16, (lots 48 thru 109 & 134 thru 352) Block 17, (lots 1 thru 8) Block 18, (lots 1 thru 11) Block 19, (lots 1 thru 7) S.W. PORTION OF UNIT FIVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	July 26, 1962

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PAGE No.	DESCRIPTION	FILING DATE
28	S.E. Portion of Unit Five Unit 5, Block 16, (lots 1 thru 47 & 353 thru 401) Block 20, (lots 1 thru 20) Block 21, (lots 1 thru 20) Block 22, (lots 1 thru 20) Block 23, (lots 1 thru 12) Block 24, (lots 1 thru 5) Block 25, (lots 1 thru 9) Block 26, (lots 1 thru 12) Block 27, (lots 1 thru 25) Block 28, (lots 1 thru 15) Block 29, (lots 1 thru 11) Block 30, (lots 1 thru 7) Block 31, (lots 1 thru 23) Block 32, (lots 1 thru 15) Block 33, (lots 1 thru 19) Block 34, (lots 1 thru 23) Block 35, (lots 1 thru 23) Block 36, (lots 1 thru 12) Block 37, (lots 1 thru 15) Block 38, (lots 1 thru 3) Block 39, (lots 1 thru 79) Block 40, (lots 1 thru 8) Block 41, (lots 42 thru 171) S.E. PORTION OF UNIT FIVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	July 26, 1962
29	N.W. Portion of Unit Five Unit 5, Block 16, (lots 110 thru 133) Block 42, (lots 1 thru 8) Block 43, (lots 1 thru 8) Block 44, (lots 1 thru 8) Block 45, (lots 1 thru 20) Block 46, (lots 1 thru 27) Block 47, (lots 1 thru 27) Block 48, (lots 1 thru 23) Block 49, (lots 1 thru 30) Block 50, (lots 1 thru 29) Block 51, (lots 1 thru 29) Block 52, (lots 1 thru 14) Block 53, (lots 1 thru 8) Block 54, (lots 9 thru 28 and 30 thru 267) Block 55, (lots 1 thru 12) Block 56, (lots 1 thru 17) Block 57, (lots 1 thru 18) Block 58, (lots 1 thru 22) Block 59, (lots 1 thru 17) Block 60, (lots 1 thru 5) Block 61, (lots 1 thru 9) Block 62, (lots 1 thru 13) N.W. PORTION OF UNIT FIVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	July 26, 1962
30	(COMPLETELY REPLATTED) N.E. PORTION OF UNIT FIVE - replatted on Page 1 C on October 19, 1962	
31	S.E. Portion of Unit Six Unit 6, Block 9, (lots 248, 249, 250 & 394 thru 438 & 446 thru 477 & 479 thru 502 Block 10, (lots 87 thru 106) Block 56, (lots 1 thru 10) Block 57, (lots 1 thru 28) Block 58, (lots 1 thru 10) Block 59, (lots 1 thru 20) Block 60, (lots 1 thru 20) Block 61, (lots 1 thru 35) Block 62, (lots 1 thru 33) Block 63, (lots 1 thru 34) Block 64, (lots 1 thru 55) Block 65, (lots 1 thru 54) Block 66, (lots 1 thru 52) Block 67, (lots 1 thru 62) Block 68, (lots 1 thru 14) Block 69, (lots 1 thru 13) Block 70, (lots 1 thru 14) Block 71, (lots 1 thru 30) Block 72, (lots 11 thru 40) Block 73, (lots 8 thru 18) S.E. PORTION OF UNIT SIX, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec 11, 1962
32	S.W. PORTION OF UNIT SIX, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 6, Block 9, (lots 251 thru 393) Block 72, (lots 1 thru 10 & 41 thru 49) Block 73, (lots 1 thru 7 & 19 thru 25) Block 74, (lots 1 thru 5) Block 75, (lots 1 thru 9) Block 76, (lots 1 thru 26) Block 77, (lots 1 thru 31) Block 78, (lots 1 thru 27) Block 79, (lots 1 thru 38) Block 80, (lots 1 thru 37) Block 81, (lots 1 thru 13) Block 82, (lots 1 thru 20) Block 83, (lots 1 thru 20) Block 84, (lots 1 thru 17)	Dec 11, 1962

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RIO RANCHO ESTATES
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PAGE No.	DESCRIPTION	FILING DATE
32	Block 85, (lots 1 thru 21)	
	Block 86, (lots 1 thru 33)	
	Block 87, (lots 1 thru 28)	
	Block 88, (lots 1 thru 34)	
	Block 89, (lots 1 thru 22)	
	Block 90, (lots 1 thru 16)	
	Block 91, (lots 1 thru 14)	
	Block 92, (lots 1 thru 10)	
	Block 93, (lots 1 thru 10)	
	Block 94, (lots 1 thru 9)	
	Block 95, (lots 1, 2, & 3)	
	Block 96, (lots 1 thru 12)	
	Block 97, (lots 9 thru 15)	
33	N.W. PORTION OF UNIT SIX, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec 11, 1962
	Unit 6, Block 1, (lots 1 thru 62)	
	Block 2, (lots 1 thru 63)	
	Block 3, (lots 1 thru 64)	
	Block 4, (lots 1 thru 63)	
	Block 5, (lots 1 thru 36)	
	Block 6, (lots 1 thru 44)	
	Block 7, (lots 1 thru 35)	
	Block 8, (lots 1 thru 41)	
	Block 9, (lots 2 thru 18 & 64 thru 136 & 138 thru 205)	
	Block 11, (lots 1 thru 28)	
	Block 12, (lots 1 thru 32)	
	Block 13, (lots 1 thru 31)	
	Block 14, (lots 1 thru 24)	
	Block 15, (lots 1 thru 24)	
	Block 16, (lots 1 thru 24)	
	Block 17, (lots 1 thru 24)	
	Block 18, (lots 1 thru 65)	
	Block 19, (lots 1 thru 43)	
	Block 20, (lots 1 thru 24)	
	Block 21, (lots 1 thru 24)	
	Block 22, (lots 1 thru 8)	
	Block 23, (lots 1 thru 18)	
	Block 24, (lots 1 thru 36)	
	Block 25, (lots 1 thru 36)	
	Block 26, (lots 1 thru 37)	
	Block 27, (lots 1 thru 41)	
	Block 28, (lots 1 thru 45)	
	Block 29, (lots 1 thru 42)	
	Block 30, (lots 1 thru 45)	
34	N.E. PORTION OF UNIT SIX, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec 11, 1962
	Unit 6, Block 9, (lots 19 thru 63, & 137, & 206 thru 247 & 439 thru 445)	
	Block 10, (lots 2 thru 84)	
	Block 31, (lots 1 thru 10)	
	Block 32, (lots 1 thru 17)	
	Block 33, (lots 1 thru 21)	
	Block 34, (lots 1 thru 19)	
	Block 35, (lots 1 thru 62)	
	Block 36, (lots 1 thru 34)	
	Block 37, (lots 1 thru 52)	
	Block 38, (lots 1 thru 51)	
	Block 39, (lots 1 thru 17)	
	Block 40, (lots 1 thru 55)	
	Block 41, (lots 1 thru 36)	
	Block 42, (lots 1 thru 36)	
	Block 43, (lots 1 thru 12)	
	Block 44, (lots 1 thru 56)	
	Block 45, (lots 1 thru 7)	
	Block 46, (lots 1 thru 13)	
	Block 47, (lots 1 thru 33)	
	Block 48, (lots 1 thru 25)	
	Block 49, (lots 1 thru 25)	
	Block 50, (lots 1 thru 11)	
	Block 51, (lots 1 thru 9)	
	Block 52, (lots 1 thru 9)	
	Block 53, (lots 1 thru 10)	
	Block 54, (lots 1 thru 18)	
	Block 55, (lots 1 thru 24)	
35	NORTHERLY PORTION OF S.W. PORTION OF UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec 11, 1962
	Unit 11, Block 21, (lots 1 thru 68)	
	Block 22, (lots 1 thru 58)	
	Block 23, (lots 1 thru 50)	
	Block 24, (lots 1 thru 42)	
	Block 25, (lots 1 thru 32)	
	Block 26, (lots 1 thru 24)	
	Block 27, (lots 1 thru 16)	
	Block 28, (lots 1 thru 7)	
	Block 29, (lots 1 thru 58)	
36	N.W. PORTION OF UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec 11, 1962
	Unit 11, Block 1, (lots 1 thru 34 & 47 thru 80)	
	Block 2, (lots 1 thru 34 & 47 thru 80)	
	Block 3, (lots 1 thru 80)	

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PAGE No.	DESCRIPTION	FILING DATE
36	Blocks 4, 5, 6, 7, 8, & 9, (lots 1 thru 34 & 47 thru 80 each)	
	Block 10, (lots 1 thru 34 & 44 thru 76)	
	Block 11, (lots 1 thru 21 & 42 thru 59)	
	Block 12, (lots 1 thru 62)	
	Blocks 13, 14, 15, 16, 17, 18, & 19, (lots 1 thru 66 each)	
	Block 20, (lots 1 thru 10 & 34 thru 66)	
37	PORTION OF S.E. PORTION OF UNIT SEVEN, RIO RANCHO ESTATES TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec 11, 1962
	Unit 7, B. A Block 46, (lot 4 & 6 & 10 thru 16 & 20 thru 24 & 26, 27 & 30)	
	B. A Block 47, (lots 1 & 6, 7, & 8, 10 & 15 & 16, 23 & 24 & 26 thru 30)	
	B. A Block 48, (lots 3 thru 7 & 12, & 13, & 20 thru 25, & 29, & 31 thru 36)	
	B. A Block 49, (lots 10 & 21, & 26 thru 33)	
	B. A Block 50, (lots 2 thru 6 & 8 & 9, & 27 thru 33 & 35)	
	B. A Block 51, (lots 1, 2, & 3, & 5 thru 10, & 18 & 19, & 28 & 31, & 33, 34, & 35)	
	B. A Block 52, (lots 2, & 4, 5, & 12 & 15 & 16, & 18 & 19, & 21 & 25 thru 28 & 30 & 31, & 33, 34, & 35)	
	B. A Block 53, (lots 4 & 5, & 7 thru 10, 15, 16, & 19 & 21, 22, & 23, 26, 27, & 33)	
	B. A Block 54, (lots 3 & 4, & 6, 7, & 8, & 16, & 17, & 25 thru 30)	
	B. A Block 55, (lots 6, & 9 thru 12, & 15 thru 17 & 24, 25, & 27)	
	Block 56, (lots 1 thru 21)	
	Block 57, (lots 1 thru 22)	
	Block 5[illegible] (lots 1 thru 38)	
	Block 59, (lots 1 thru 38)	
	Block 60, (lots 1 thru 38)	
	Block 61, (lots 1 thru 38)	
	Block 62, (lots 1 thru 14)	
	Block 63, (lots 1 thru 12)	
	Block 64, (lots 1 thru 7)	
	Block 65, (lots 1 thru 10)	
38	S.W. PORTION OF UNIT SEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 11, 1962
	Unit 7, Block 1, (lots 1 thru 54)	
	Block 2, (lots 1 thru 45)	
	Block 3, (lots 1 thru 43)	
	Block 4, (lots 1 thru 54)	
	Block 5, (lots 1 thru 54)	
	Block 6, (lots 1 thru 40)	
	Block 7, (lots 1 thru 37)	
	Block 8, (lots 1 thru 54)	
	Block 9, (lots 1 thru 54)	
	Block 10, (lots 1 thru 35)	
	Block 11, (lots 1 thru 28)	
	Block 12, (lots 1 thru 14)	
	Block 13, (lots 1 thru 42)	
	Block 14, (lots 1 thru 41)	
	Block 15, (lots 1 thru 38)	
	Block 16, (lots 1 thru 44)	
	Block 17, (lots 1 thru 85)	
	B. A Block 18, (lots 1 thru 10 & 13 thru 140)	
	Block 19, (lots 1 thru 17)	
	Block 20, (lots 1 thru 21)	
	Block 21, (lots 1 thru 32)	
	Block 22, (lots 1 thru 32)	
	Block 23, (lots 1 thru 32)	
	Block 24, (lots 1 thru 42)	
39	N.W. PORTION OF UNIT SEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 11, 1962
	Unit 7, Block 25, (lots 1 thru 32)	
	Block 26, (lots 1 thru 16)	
	Block 27, (lots 1 thru 26)	
	Block 28, (lots 1 thru 24)	
	Block 29, (lots 1 thru 17)	
	Block 30, (lots 1 thru 28)	
	Block 31, (lots 1 thru 19)	
	Block 32, (lots 1 thru 13)	
	Block 33, (lots 1 thru 85 & 88 thru 120)	
	Block 34, (lots 1 thru 35)	
	Block 35, (lots 1 thru 25)	
	Block 36, (lots 1 thru 27)	
	Block 37, (lots 1 thru 29)	
	Block 38, (lots 1 thru 44)	
	Block 39, (lots 2 thru 22) & (lots 25 thru 44)	
	Block 40, (lots 1 thru 20) & (lots 23 thru 41)	
	Block 41, (lots 1 thru 19) & (lots 25 thru 42)	
	Block 42, (lots 1 thru 35)	
	Block 43, (lots 1 thru 31)	
	Block 44, (lots 1 thru 27)	
	Block 45, (lots 1 thru 26)	
40	N.W. PORTION OF UNIT EIGHT, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Dec. 11, 1962
	Unit 8, Block 19, (lots 1 thru 28)	
	Block 20, (lots 1 thru 36)	
	Block 21, (lots 1 thru 36)	

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PAGE No.	DESCRIPTION	FILING DATE
40	Block 22, (lots 1 thru 28) Block 23, (lots 1 thru 28) Block 24, (lots 1 thru 36) Block 25, (lots 1 thru 39) Block 26, (lots 1 thru 36) Block 27, (lots 1 thru 28) Block 28, (lots 1 thru 28) Block 29, (lots 1 thru 36) Block 30, (lots 1 thru 28) Block 31, (lots 1 thru 28) Block 32, (lots 1 thru 30) Block 33, (lots 1 thru 36) Block 34, (lots 1 thru 36) Block 35, (lots 1 thru 30) Block 36, (lots 1 thru 26) Block 37, (lots 1 thru 36) Block 38, (lots 7 thru 28) Block 39, (lots 7 thru 36) Block 40, (lots 1 thru 18) Block 41, (lots 1 thru 7) Block 42, (lots 1 and 2)	
41	N.E. PORTION OF UNIT EIGHT, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 8, Block 41, (lots 8 thru 37) Block 42, (lots 3 thru 42) Block 43, (lots 1 thru 17) Block 44, (lots 1 thru 11) Block 45, (lots 1 thru 12) Block 46, (lots 1 thru 36) Block 47, (lots 1 thru 19) Block 48, (lots 1 thru 42) Block 49, (lots 1 thru 24) Block 50, (lots 1 thru 24) Block 51, (lots 1 thru 35) Block 52, (lots 1 thru 32) Block 53, (lots 1 thru 24) Block 54, (lots 1 thru 24) Block 55, (lots 1 thru 30) Block 56, (lots 1 thru 29) Block 57, (lots 1 thru 24) Block 58, (lots 1 thru 24) Block 59, (lots 1 thru 27) Block 60, (lots 1 thru 24) Block 61, (lots 1 thru 24) Block 62, (lots 1 thru 24) Block 63, (lots 1 thru 21) Block 64, (lots 1 thru 8) Block 65, (lots 1 thru 17) Block 66, (lots 1 thru 24) Block 67, (lots 1 thru 24)	Dec. 11, 1962
42	ENTIRE PAGE REPLATTED, Unit Sixteen (Central Portion), see page 42-A	
42A	AMENDED PLAT CENTRAL PORTION OF UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, B/A Block 17, (lots 1 thru 21) B/A Block 27, (lots 1 thru 29) B/A Block 28, (lots 1 thru 40) B/A Block 29, (lots 1 thru 51) B/A Block 30, (lots 1 thru 62) Block 31, (lots 1 thru 12) B/A Block 32, (lots 1 thru 7) B/A Block 33, (lots 1 thru 21) B/A Block 34, (lots 1 thru 19) B/A Block 35, (lots 1 thru 34) B/A Block 36, (lots 1 thru 62) B/A Block 37, (lots 1 thru 51) B/A Block 38, (lots 1 thru 40) B/A Block 39, (lots 1 thru 29) B/A Block 40, (lots 1 thru 14)	May 26, 1964
43	ENTIRE PAGE REPLATTED, Unit Sixteen (Northerly portion), see page 43-A	
43A	AMENDED PLAT NORTHERLY PORTION OF UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, Block 46, (lots 1 thru 24) Block 47, (lots 1 thru 12) Block 48, (lots 1 thru 32) Block 49, (lots 1 thru 40) Block 50, (lots 1 thru 50) Block 51, (lots 1 thru 33) Block 52, (lots 1 thru 23) Vacated 9/8/69 for Golf Course Block 53, (lots 1 thru 17) Block 54, (lots 1 thru 30) Block 55, (lots 1 thru 43) Block 56, (lots 1 thru 55) Block 57, (lots 1 thru 49) Block 58, (lots 1 thru 37)	May 26, 1964

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PAGE No.	DESCRIPTION	FILING DATE
44	N.W. PORTION OF UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 13, Block 1, (lots 27 & 28) Block 2, (lots 1 thru 17) Block 3, (lots 1 thru 34) Block 4, (lots 1 thru 34) Block 5, (lots 1 thru 34) Block 6, (lots 1 thru 34) Block 7, (lots 1 thru 34) Block 8, (lots 1 thru 34) Block 9, (lots 1 thru 34) Block 10, (lots 1 thru 34) Block 11, (lots 18 thru 34) Block 12, (lots 1 thru 82) Block 13, (lots 1 thru 82) Block 14, (lots 1 thru 82) Block 15, (lots 1 thru 82) Block 16, (lots 1 thru 80) Block 17, (lots 4 thru 32) & (52 thru 85) Block 18, (lots 1 thru 13) & (21 thru 40) Block 19, (lots 1 thru 40) Block 20, (lots 1 thru 20) Block 21, (lots 1 thru 20)	April 22, 1963
45	EASTERLY PORTION OF S.E. PORTION OF UNIT EIGHT, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 8, Block 68, (lots 1 thru 54) Block 69, (lots 1 thru 53) Block 70, (lots 1 thru 55) Block 71, (lots 1 thru 62) Block 72, (lots 1 thru 30) Block 73, (lots 1 thru 39) Block 74, (lots 1 thru 40) Block 75, (lots 1 thru 32) Block 76, (lots 1 thru 34) Block 77, (lots 1 thru 26) Block 78, (lots 1 thru 18) Block 79, (lots 1 thru 54) Block 80, (lots 1 thru 25) & (lots 32 thru 58) Block 81, (lots 1 thru 21) & (lots 26 thru 48) Block 82, (lots 1 thru 17) & (lots 22 thru 40) Block 83, (lots 1 thru 12) & (lots 19 thru 32) Block 84, (lots 1 thru 8) & (lots 13 thru 22) Block 85, (lots 6 thru 16) Block 86, (lots 1 thru 70) Block 87, (lots 1 thru 71) Block 88, (lots 1 thru 29) Block 89, (lots 1 thru 21) Block 90, (lots 1 thru 34) Block 91, (lots 1 thru 37) Block 92, (lots 1 thru 27)	April 22, 1963
46	WESTERLY PORTION OF S.E. PORTION OF UNIT EIGHT, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 8, Block 1, (lots 36 thru 71) Block 9, (lots 71 thru 181) Block 18, (lots 14 thru 35) Block 93, (lots 1 thru 58) Block 94, (lots 1 thru 56) Block 95, (lots 1 thru 42) Block 96, (lots 1 thru 28) Block 97, (lots 1 thru 28) Block 98, (lots 1 thru 57) Block 99, (lots 1 thru 106)	April 22, 1963
47	N.E. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 12, Block 4, (lots 1 thru 24) Block 5, (lots 1 thru 30) & (lots 67 thru 96) Block 6, (lots 1 thru 44) & (lots 67 thru 96) Block 7, (lots 1 thru 17) Block 8, (lots 1 thru 16) Block 9, (lots 1 thru 48) Block 10, (lots 1 thru 48) Block 11, (lots 1 thru 16) Block 12, (lots 1 thru 13) Block 13, (lots 1 thru 6) Block 14, (lots 1 thru 8) Block 15, (lots 1 thru 6) Block 16, (lots 1 thru 7) Block 17, (lots 1 thru 6) Block 18, (lots 1 thru 8) Block 19, (lots 1 thru 39) Block 20, (lots 1 thru 22) Block 22, (lots 1 thru 6) Block 23, (lots 1 thru 11) Block 24, (lots 1 thru 19) Block 25, (lots 1 thru 18) Block 26, (lots 1 thru 18) Block 27, (lots 1 thru 17) Block 28, (lots 1 thru 16)	April 22, 1963

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48 N.E. PORTION OF UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — April 22, 1963

Unit 13, Block 1, (lots 54, 55, & 56)
Block 24, (lots 1 thru 34) & (lots 41 thru 74)
Block 25, (lots 1 thru 34) & (lots 41 thru 74)
Block 26, (lots 1 thru 16) & (lots 21 thru 36)
Block 27, (lots 5 thru 15) & (lots 20 thru 30)
Block 28, (lots 1 thru 28)
Block 29, (lots 1 thru 49) & (lots 52 thru 58) & (lots 67 thru 75) & (lots 77 thru 80)
Block 30, (lots 1 thru 4) & (lots 19 thru 22)
Block 31, (lots 1 thru 26)
Block 32, (lots 1 thru 59)
Block 33, (lots 1 thru 20)
Block 34, (lots 1 thru 23)
Block 35, (lots 1 thru 26)
Block 36, (lots 1 thru 29)
Block 37, (lots 1 thru 30)
Block 38, (lots 1 thru 30)
Block 39, (lots 1 thru 30)
Block 40, (lots 1 thru 30)
Block 41, (lots 6 thru 30)

49 S.W. PORTION OF UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — April 22, 1963

Unit 13, Block 43, (lots 1 thru 60)
Block 44, (lots 1 thru 62)
Block 45, (lo[illegible] thru 62)
Block 46, (lots [illegible] thru 32)
Block 47, (lots 1 thru 32)
Block 48, (lots 1 thru 21)
Block 49, (lots 1 thru 23)
Block 50, (lots 1 thru 24)
Block 52, (lots 1 thru 21)
Block 53, (lots 1 thru 21)
Block 54, (lots 1 thru 25)
Block 55, (lots 1 thru 24)
Block 56, (lots 6 thru 37)
Block 57, (lots 1 thru 11)
Block 58, (lots 1 thru 6)
Block 60, (lots 1 thru 25)
Block 61, (lots 1 thru 8)
Block 62, (lots 1 thru 12)
Block 64, (lots 1 thru 25)
Block 65, (lots 1 thru 21)
Block 66, (lots 1 thru 17)
Block 67, (lots 1 thru 13)
Block 68, (lots 1 thru 15)

50 NORTHERLY PORTION OF N.E. PORTION OF UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — April 22, 1963

Unit 11, Block 30, (lots 1 thru 10)
Block 31, (lots 1 thru 13)
Block 32, (lots 1 thru 5) & (lots 7 thru 20)
Block 33, (lots 1 thru 28)
Block 34, (lots 1 thru 40)
Block 35, (lots 1 thru 59)
Block 36, (lots 1 thru 17)
Block 37, (lots 1 thru 16)
Block 38, (lots 1 thru 16)
Block 39, (lots 9 thru 50)
Block 40, (lots 1 thru 25)
Block 41, (lots 1 thru 12)
Block 42, (lots 1 thru 6)
Block 43, (lots 1 thru 14)
Block 44, (lots 1 thru 7)
Block 45, (lots 1 thru 26)

51A S.E. PORTION OF UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — Feb. 9, 1967

Unit 13, Block 70, (lots 1 thru 96)
Block 71, (lots 1 thru 45)
Block 72, (lots 1 thru 39)
Block 73, (lots 1 thru 35)
Block 74, (lots 1 thru 31)
Block 75, (lots 1 thru 20)
Block 76, (lots 1 thru 20)
Block 77, (lots 1 thru 42)
Block 78, (lots 1 thru 18)
Block 79, (lots 1 thru 19)
Block 80, (lots 1 thru 33)
Block 81, (lots 1 thru 16)
Block 82, (lots 1 thru 13)
Block 83, (lots 1 thru 10)
Block 84, (lots 1 thru 9)
Block 85, (lots 1 thru 22)
Block 86, (lots 1 thru 10)
Block 87, (lots 1 thru 13)
Block G, (lots 1 thru 17) & (19 thru 21)
Block H, (lots 1 thru 67)
Block J, (lots 1 thru 44)

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52A EASTERLY PORTION OF N.W. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — Feb. 9, 1967

Unit 12, Block 31, (lots 8 thru 12)
Block 32, (lots 14 thru 65)
Block 33, (lots 1 thru 30)
Block 34, (lots 1 thru 34)
Block 35, (lots 1 thru 33)
Block 36, (lots 1 thru 33)
Block 37, (lots 1 thru 63)
Block 38, (lots 1 thru 63)
Block H, (lots 1 thru 53)

53 WESTERLY PORTION OF N.W. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — Oct. 7, 1964

Unit 12, Block A, (lots 1 thru 67)
Block 41, (lots 1 thru 34)
Block 42, (lots 1 thru 34)
Block 43, (lots 1 thru 30)
Block 44, (lots 1 thru 13)
Block 45, (lots 1 thru 12)
Block 46, (lots 1 thru 8)
Block 47, (lots 1 thru 68)
Block 48, (lots 1 thru 22)
Block 49, (lots 1 thru 12)
Block 50, (lots 1 thru 16)

51A S.E. PORTION OF UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — Feb. 9, 1967

Unit 13, Block 70, (lots 1 thru 96)
Block 71, (lots 1 thru 45)
Block 72, (lots 1 thru 39)
Block 73, (lots 1 thru 35)
Block 74, (lots 1 thru 31)
Block 75, (lots 1 thru 20)
Block 76, (lots 1 thru 20)
Block 77, (lots 1 thru 42)
Block 78, (lots 1 thru 18)
Block 79, (lots 1 thru 19)
Block 80, (lots 1 thru 33)
Block 81, (lots 1 thru 16)
Block 82, (lots 1 thru 13)
Block 83, (lots 1 thru 10)
Block 84, (lots 1 thru 9)
Block 85, (lots 1 thru 22)
Block 86, (lots 1 thru 10)
Block 87, (lots 1 thru 13)
Block G, (lots 1 thru 17) & (19 thru 21)
Block H, (lots 1 thru 67)
Block J, (lots 1 thru 44)

52A EASTERLY PORTION OF N.W. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — Feb. 9, 1967

Unit 12, Block 31, (lots 8 thru 12)
Block 32, (lots 14 thru 65)
Block 33, (lots 1 thru 30)
Block 34, (lots 1 thru 34)
Block 35, (lots 1 thru 33)
Block 36, (lots 1 thru 33)
Block 37, (lots 1 thru 63)
Block 38, (lots 1 thru 63)
Block H, (lots 1 thru 53)

53 WESTERLY PORTION OF N.W. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — Oct. 7, 1964

Unit 12, Block A, (lots 1 thru 67)
Block 41, (lots 1 thru 34)
Block 42, (lots 1 thru 34)
Block 43, (lots 1 thru 30)
Block 44, (lots 1 thru 13)
Block 45, (lots 1 thru 12)
Block 46, (lots 1 thru 8)
Block 47, (lots 1 thru 68)
Block 48, (lots 1 thru 22)
Block 49, (lots 1 thru 12)
Block 50, (lots 1 thru 16)

54 N.E. PORTION OF S.E. PORTION OF UNIT SEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — May 12, 1966

Unit 7, Block 67, (lots 1 thru 7)
Block 68, (lots 1 thru 21)

55 N.E. PORTION OF UNIT SEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO — May 12, 1966

Unit 7, Block 40, (lots 21 thru 22)
Block 41, (lots 20 thru 24)
Block 69, (lots 29 thru 60)
Block 70, (lots 1 thru 21)
Block 71, (lots 1 thru 33)

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PAGE No.	DESCRIPTION	FILING DATE
55	Block 72, (lots 1 thru 21) & (31 thru 51) Block 74, (lots 1 thru 86) Block 75, (lots 1 thru 13) Block 76, (lots 1 thru 111) Block 77, (lots 1 thru 67) Block 78, (lots 1 thru 68) Block 79, (lots 1 thru 13) Block 80, (lots 1 thru 18) Block 81, (lots 1 thru 18) Block 82, (lots 1 thru 12) Block 83, (lots 1 thru 11) Block 84, (lots 1 thru 36) Block 85, (lots 1 thru 32) Block 86, (lots 1 thru 16)	
56A	S.W. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 12, Block 54, (lots 1 thru 41) Block 55, (lots 1 thru 37) Block 56, (lots 1 thru 35) Block 57, (lots 1 thru 22) Block 60, (lots 1 thru 13) Block 61, (lots 1 thru 33) Block 62, (lots 1 thru 14) Block 63, (lots 1 thru 9) Block 64, (lots 1 thru 9) Block 65, (lots 1 thru 19) Block 66, (lots 1 thru 20) Block 67, (lots 1 thru 12) Block 68, (lots 1 thru 36) Block 69, (lots 1 thru 19) Block 70, (lots 1 thru 7) Block 71, (lots 1 thru 17) Block 72, (lots 1 thru 15) Block 73, (lots 1 thru 13) Block 74, (lots 1 thru 17) Block 75, (lots 1 thru 71) Block 76, (lots 1 thru 37)	Feb. 9, 1967
57A	S.E. PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 12, Block 19, (lots 40 thru 49) Block 32, (lots 101 thru 115) Block 76, (lots 38 thru 105) Block 85, (lots 1 thru 36) Block 86, (lots 1 thru 16) Block 87, (lots 1 thru 11) & (lots 13 thru 18) Block 88, (lots 1 & 2) & (lots 4 thru 38) Block 89, (lots 1 thru 32) Block 90, (lots 1 thru 39)	Feb. 9, 1967
58	BLOCKS "A", "B", "C", "D", "E", "AA", "BB", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 11, Block A, (lots 1 thru 50) Block B, (lots 1 thru 41) Block C, (lots 1 thru 10) Block D, (lots 1 thru 28) Block E, (lots 1 thru 81) Block AA, (lots 2 thru 46) Block BB, (lots 1 thru 41)	April 7, 1964
59	BLOCKS "F", "G", "H", AND "J", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 11, Block F, (lots 1 thru 29) Block G, (lots 1 thru 57) Block H, (13.71 acres) no lots Vacated Block J, (lots 1 thru 39)	May 26, 1964
60	BLOCKS "K", "L", "M", "N", "O", "P", "Q", "R", "CC", "DD", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 11, Block N, (lots 1 thru 44) Block O, (lots 2 thru 50) Block P, (lots 1 thru 26) Block CC, (lots 1 thru 44) (BLOCKS K, L, M, Q, R, & DD VACATED	May 26, 1964
61	REPLAT OF LOTS WITHIN UNITS ONE, TWO, FIVE AND SIX, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 1, Block A, (lots 1 thru 37) Unit 1, Block B, (lots 1 thru 16) Unit 2, Block A, (lots 1 thru 19) Unit 5, Block A, (lots 1 thru 37) Unit 5, Block B, (lots 1 thru 41) Unit 6, Block A, (lots 1 thru 28) Unit 6, Block B, (lots 1 thru 25) Unit 6, Block C, (lots 1 thru 35)	Aug. 4, 1964

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PAGE No.	DESCRIPTION	FILING
62	CENTRAL WEST PORTION OF UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, Block 69, (lots 17 thru 45) Block 70, (lots 18 thru 50) Block 72, (lots 1 thru 58) Block 73, (lots 1 thru 58) Block 74, (lots 1 thru 58) Block 75, (lots 15 thru 63) Block 76, (lots 1 thru 44) & (COMMERCIAL TRACT A) 7.75 acres Block 77, (lots 15 thru 63) Block 78, (lots 1 thru 50) Block 79, (lots 9 thru 114) Block 80, (lots 1 thru 12) Block 81, (lots 1 thru 12) Block 82, (lots 1 thru 60) Block 83, (lots 1 thru 60) Block 84, (Tract "A" Commercial) 10.05 acres Block 85, (lots 10 thru 35) Block 86, (lots 10 thru 35) Block 87, (lots 10 thru 53) Block 88, (lots 7 thru 34) & Tract "A" Future Schol Site 6.00 acres Block 89, (lots 7 thru 46) Block 90, (lots 11 thru 76) Block 91, (lots 11 thru 76) Block 92, (lots 11 thru 76) Block 93, (lots 11 thru 76) Block 94, (lots 1 thru 58)	Aug. 25,
63	REPLAT OF LOTS WITHIN UNITS EIGHT, NINE, ELEVEN, THIRTEEN, & SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 8, Block A, (lots 1 thru 19) Unit 9, Block A, (lots 1 thru 20) Unit 11, Block S, (lots 1 thru 25) Unit 11, Block T, (lots 1 thru 36) Unit 13, Block B, (lots 1 thru 32) Unit 13, Block C, (lots 1 thru 60) Unit 16, Block 71, (lots 1 thru 42) Unit 16, Block E, (lots 1 thru 6) & (lots 8 thru 14)	Aug. 25,
64	REPLAT OF LOTS WITHIN UNITS FOUR, FIVE, NINE, ELEVEN & SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 4, Block A, (lots 1 thru 11) Unit 5, Block C, (lots 1 thru 14) Unit 5, Block D, (lots 1 thru 32) Unit 9, Block B, (lots 1 thru 16) Unit 11, Block AA, (lot 47) Unit 11, Block O, (lot 146) Unit 11, Block P, (lot 27) Unit 16, Block 67, (lot 5) Unit 16, Block E, (lot 15)	Feb. 10, 196
65	FIRST REPLAT OF PORTION OF CENTRAL PORTION, UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY NEW MEXICO Unit 16, Block 1A, (lots 1 thru 17) B/A Block 2A, (lots 1 thru 11) B/A Block 3A, (lots 1 thru 19) B/A Block 4A, (lots 1 thru 20)	March 2, 1965
66	REPLAT OF LOTS WITHIN UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 11, Block U, (lots 1 thru 22) Block V, (lots 1 thru 82) Block W, (lots 1 thru 22) Block 10, (lot 77) Block 39, (lots 59 & 60)	Dec. 8, 1965
67	SOUTHERLY PORTION OF UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 12, Block B, (lots 58 thru 114) Block C, (lots 60 thru 118) Block D, (lots 33 thru 64)	Dec. 8, 1965
68	REPLAT OF BLOCKS 1 thru 7, INCLUSIVE & BLOCKS 41 thru 45, INCLUSIVE & TRACT "D" OF AMENDED PLAT CENTRAL PORTION OF UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, B/A Block 5A, (lots 7 thru 31) & (lots 37 & 38 & lot S) B/A Block 6A, (lots 1 & 2) & (lots 7 thru 11) B/A Block 7A, (lots 1 & 2) & (lot B/A Block 15A, (lots 11 & 18) B/A Block 16A, (lots 9, 10, & 11) B/A Block 17A, (lots 4 thru 12) B/A Block 18A, (lots 1 thru 8)	Feb. 9, 1966

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PAGE No.	DESCRIPTION	FILING DATE
68	B/A Block 19A, (lots 1 thru 14) (Lot 2 to: SW portion & NE Portion) (Lot 5 to: SW one-half & NE one-half) B/A Block 20A, (lot 1, & lots 6 thru 9) B/A Block 21A, (lots 1 & 2, lots 6 & 7, & lot 11) Block 26A, (lot 6) Block 30A, (lot 1) Block 31A, (lots 1 thru 5)	
69	REPLAT OF LOTS WITHIN UNITS SEVEN AND THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 7, Block 69, (lots 61 thru 97) Unit 13, Block E, (lots 1 thru 50) Unit 13, Block AA, (lots 1 thru 21) Unit 13, Block BB, (lots 1 thru 32) Unit 13, Block CC, (lots 1 thru 60) Unit 13, Block DD, (lots 1 thru 24) Unit 13, Block EE, (lots 1 thru 22) Unit 13, Block FF, (lots 1 thru 11) Unit 13, Block GG, (lots 1 thru 23) Unit 13, Block HH, (lots 1 thru 10) Unit 13, TRACT "D" AND TRACT "F"	June 13, 1966
70	REPLAT OF LOTS WITHIN UNITS SEVEN, THIRTEEN AND SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 7, Block X, (lots 25 thru 52) Block Y, (lots 45 thru 88) Block Z, (lots 14 thru 29) Block UU, (lots 22 thru 30) Block VV, (lots 1 thru 28) Block XX, (lots 1 thru 24) Block YY, (lots 1 thru 44) Unit 7, TRACT "B" Unit 13, Block JJ, (lots 51 thru 100) Unit 16, Block 31A, (lots 6, 7, & 8) Block F, (lots 1 thru 10) Block H, (lots 1 thru 10) Block J, (lots 1 thru 10) Block K, (lots 1 thru 10) Block L, (lots 1 thru 10) Block M, (lots 1 thru 6) Block N, (lots 1 thru 6) Block O, (lots 1 thru 8) Block P, (lots 1 thru 9) Block AA, (lots 1 thru 16) Block BB, (lots 17 thru 32) Block CC, (lots 1 thru 9) Block DD, (lots 1 thru 9) Block EE, (lots 11 thru 20) Block FF, (lots 1 thru 14) Block GG, (lots 1 thru 14) Block HH, (lots 46 thru 56)	Aug. 8, 1966
71	REPLAT OF BLOCKS WITHIN UNITS TWELVE & THIRTEEN, RIO RANCHO, ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 12, Block 51A, (15.20 acres) Unit 12, TRACT "G" (29.27 acres) Unit 13, TRACT "L" (24.37 acres) Unit 13, (PARK & RECREATION AREA) (14.41 acres) Unit 13, (PARK & RECREATION AREA) (11.51 acres)	Feb. 9, 1967
72	REPLAT OF LOTS WITHIN UNITS ELEVEN, TWELVE & THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 11, Block UU, (lots 23 thru 44) Block VV, (lots 83 thru 164) Block WW, (lots 23 thru 44) Unit 11, (PARK & RECREATION AREA) (10.00 acres) Unit 12, Block BB, (lots 1 thru 57) Block CC, (lots 1 thru 59) Block DD, (lots 1 thru 32) Unit 13, (TRACT "E") (18.15 acres) Unit 13, (PARK & RECREATION AREA) (8.00 acres)	Feb. 9, 1967
73	NORTHEASTERLY PORTION UNIT TEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 10, Block 11, (lot 6) Block 12, (lots 23 & 24) Block 13, (lots 23 thru 26) Block 14, (lots 20 thru 69) Block 21, (lots 26 thru 73) Block 30, (lots 1 thru 35) Block 31, (lots 1 thru 41) Block 32, (lots 1 & 2) Block 33, (lots 1 thru 138) Block 34, (lots 1 thru 31) Block 35, (lots 1 thru 38) Block 36, (lots 1 thru 45) Block 37, (lots 1 thru 51) Block 38, (lots 1 thru 50)	May 13, 1968

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PAGE No.	DESCRIPTION	FILING D
73	Block 39, (lots 1 thru 28) Block 40, (lots 1 thru 22) Block 41, (lots 1 thru 15) Block 42, (lots 1 thru 8) Block A, (lots 1 thru 18) Block B, (lots 1 thru 24) Block C, (lots 1 thru 16) Unit 10, TRACT "D" (22.70 acres)	
74	NORTHERLY PORTION, SOUTHWESTERLY PORTION, UNIT TEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 10, Block 3, (lots 21 thru 60) Block 4, (lots 4 & 5 & 8 thru 32) Block 5, (lots 40 thru 56 & 66 thru 69) Block 8, (lots 47 thru 59) Block 17, (lot 6) Block 18, (lots 14 thru 63) Block 22, (lots 37 thru 44) Block 23, (lots 37 thru 44) Block 43, (lots 1 thru 38) Block 44, (lots 1 thru 36) Block 45, (lots 1 thru 39) Block 46, (lots 1 thru 34) Block 47, (lots 1 thru 45) Block 48, (lots 1 thru 40) Block 49, (lots 1 thru 32) Block 50, (lots 1 thru 40) Block 51, (lots 1 thru 32) Block 52, (lots 1 thru 49) Block 53, (lots 1 thru 40) Block 54, (lots 1 thru 40) Block 55, (lots 1 thru 35) Block 56, (lots 1 thru 24) Block 57, (lots 1 thru 13) Block 58, (lots 1 thru 9) Block 59, (lots 1 thru 14) Block 60, (lots 1 thru 37) Block 61, (lots 1 thru 17) Block 62, (lots 1 thru 33) Block 63, (lots 1 thru 18) Block 64, (lots 1 thru 25) Block 65, (lots 1 thru 41) Block 66, (lots 1 thru 28) Block 67, (lots 1 thru 31) Block 68, (lots 1 thru 36) Block 69, (lots 1 thru 16) Block 70, (lots 1 thru 17) Block 71, (lots 1 thru 22) Block 72, (lots 1 thru 27) Block 73, (lots 1 thru 35) Unit 10, TRACT E (9.61 acres) Unit 10, TRACT F (36.36 acres)	May 13,
75	SOUTHERLY PORTION, UNIT TEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 10, Block 24, (lots 37 thru 79) Block 25, (lots 30 thru 62) Block 74, (lots 1 thru 10) Block 75, (lots 1 thru 14) Block 76, (lots 1 thru 20) Block 77, (lots 1 thru 19) Block 78, (lots 1 thru 18) Block 79, (lots 1 thru 27) Block 80, (lots 1 thru 20) Unit 10, Block 81, (lots 1 thru 20) Block 82, (lots 1 thru 19) Block 83, (lots 1 thru 9) Block 84, (lots 1 thru 23) Block 85, (lots 1 thru 16) Block 86, (lots 1 thru 4) Block H, (lots 1 thru 42) Block J, (lots 1 thru 38) Block AA, (lots 1 thru 9) Block BB, (lots 1 thru 32) Block CC, (lots 1 thru 17) Unit 10, (PARK—36.40 acres)	May 13,
76	REPLAT PORTIONS OF UNITS FIVE, TWELVE, AND SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 5, Block 41, (lots 182 thru 185) Unit 12, Block 52, (lots 1 thru 53) Block 59, (lots 1 thru 64) Block J, (lots 1 thru 28) Block K, (lots 1 thru 53) Block L, (lots 1 thru 41) Block M, (lots 1 thru 46) Block AA, (lots 1 thru 28) Block EE, (lots 1 thru 10) Block FF, (lots 1 thru 5) Block GG, (lots 1 thru 41) Block HH, (lots 1 thru 46) Block 1A, (lots 1 thru 15) Block 2A, (lots 1 thru 30)	May 13,

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PAGE No.	DESCRIPTION	FILING DATE
76	Block 3A, (lots 1 thru 26) Block 6A, (lots 1 & 2) Unit 16, REVISED TRACT "B" (9.70 acres) REVISED TRACT "C" (28.49 acres) REVISED TRACT "F" (41.85 acres) COMMERCIAL TRACT "G" (10.96 acres)	
77	REPLAT PORTIONS OF UNITS TWELVE AND THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 12, Block 39, (lots 1 thru 63) Block 21A, (lots 1 thru 10) Block 40A, (lots 1 thru 40) Unit 13, Block 69, (lots 1 thru 104) Block 88, (lots 1 thru 6) Block 89, (lots 1 thru 31) Block 90, (lots 1 thru 19) Block M, (lots 1 thru 57) Block N, (lots 1 thru 39) Block O, (lots 1 thru 53) Block KK, (lots 1 thru 53) Block LL, (lots 1 thru 10) Block MM, (lots 1 thru 10) Block NN, (lots 1 thru 10) Block OO, (lots 1 thru 10) Block PP, (lots 1 thru 5) Block QQ, (lots 1 thru 22) Block RR, (lots 1 thru 19)	June 5, 1968
78	REPLAT OF PORTIONS OF BLOCKS 5-A, 6-A, 7-A, 15-A, 16-A, 17-A, 20-A 21-A, 26-A, 30-A, and 31-A and ALL OF BLOCKS 8-A THRU 14-A, 22-A thru 25-A and 27-A thru 29-A, UNIT SIXTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 16, B/A Block 5A, (lots 46 thru 49) (lots 50 thru 57) B/A Block 6A, (lots 12 and 13) B/A Block 7A, (lots 13 thru 18) B/A Block 8B, (lots 1 thru 9) B/A Block 9B, (lots 1 thru 6) B/A Block 10B, (lots 1 thru 6) B/A Block 11B, (lots 1 thru 8) B/A Block 12B, (lots 1 thru 13) B/A Block 13B, (lots 1 thru 17) B/A Block 14B, (lots 1 thru 15) B/A Block 15A, (lots 19 thru 28) B/A Block 16A, (lots 15 thru 21) B/A Block 17A, (lots 13 & 14) B/A Block 20A, (lots 10 thru 12) B/A Block 21A, (lots 12 thru 15) B/A Block 22B, (lots 1 thru 9) B/A Block 23B, (lots 1 thru 11) B/A Block 24B, (lots 1 thru 5) B/A Block 25B, (lots 1 thru 13) B/A Block 26A, (lots 12 thru 16) & lot 19 B/A Block 27B, (lots 1 thru 15) B/A Block 28B, (lots 1 thru 10) B/A Block 29B, (lots 1 thru 7) B/A Block 30A, (lots 6 & 7) B/A Block 31A, (lots 12 & 13)	July 10, 1968
79	BLOCKS 1 THRU 31, UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 17, Block 1, (lots 1 thru 21) Block 2, (lots 1 & 2) and (lots 9 thru 14) Block 3, (lots 1 thru 35) Block 4, (lots 1 thru 64) Block 5, (lots 1 thru 29) Block 6, (lots 1 thru 36) Block 7, (lots 1 thru 36) Block 8, (lots 1 thru 37) Block 9, (lots 1 thru 27) Block 10, (lots 1 thru 34) Block 11, (lots 1 thru 30) Block 12, (lots 1 thru 36) Block 13, (lots 1 thru 17) Block 14, (lots 1 thru 32) Block 15, (lots 1 thru 20) Block 16, (lots 1 thru 16) Block 17, (lots 1 thru 12) Block 18, (lots 1 thru 6) Block 19, (lots 1 thru 24) Unit 17, Block 20, (lots 1 thru 50) Block 21, (lots 1 thru 19) Block 22, (lots 1 thru 21) Block 23, (lots 1 thru 27) Block 24, (lots 1 thru 21) Block 25, (lots 1 thru 30) Block 26, (lots 1 thru 29) Block 27, (lots 1 thru 26) Block 28, (lots 1 thru 25) Block 29, (lots 1 thru 19) Block 30, (lots 1 thru 18) Block 31, (lots 1 thru 20)	Dec. 12, 1968
80	TRACT D, BLOCKS AA, B, C, AND BLOCKS 32 THRU 50, UNIT SEVENTEEN RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 17, Block 32, (lots 1 thru 15) Block 33, (lots 1 thru 8) Block 34, (lots 1 & 2) Block 35, (lots 1 thru 24) Block 36, (lots 1 thru 22) Block 37, (lots 1 thru 18) Block 38, (lots 1 thru 37) Block 39, (lots 1 thru 28) Block 40, (lots 1 thru 33) Block 41, (lots 1 thru 43) Block 42, (lots 1 thru 21) Block 43, (lots 1 thru 6) Block 44, (lots 1 thru 17) Block 45, (lots 1 thru 11) Block 46, (lots 1 thru 13) Block 47, (lots 1 thru 38) Block 48, (lots 1 thru 22) Block 49, (lots 1 thru 27) Block 50, (lots 1 thru 24) Block AA, (lots 1 thru 11) Block B, (lots 1 thru 22) Block C, (lots 1 thru 24) Unit 17, Track "D", (5.86 acres)	Dec. 12, 1968
81	TRACKS E THRU L, BLOCKS BB, M, N, O, AND BLOCKS 51 THRU 65, UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMENDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 17, Block 51, (lots 1 thru 37) Block 52, (lots 1 thru 16) Block 53, (lots 1 thru 22) Block 54, (lots 1 thru 22) Block 55, (lots 1 thru 38) Block 56, (lots 1 thru 51) Block 57, (lots 1 thru 12) Block 58, (lots 1 thru 22) Block 59, (lots 1 thru 22) Block 60, (lots 1 thru 46) Block 61, (lots 1 thru 17) Block 62, (lots 1 thru 38) Block 63, (lots 1 thru 17) Block 64, (lots 1 thru 38) Block 65, (lots 1 thru 17) Unit 17, Block M, (lots 1 thru 24) Block N, (lots 1 thru 24) Block O, (lots 1 thru 8) & (lots 16 thru 23) Block BB, (lots 1 thru 34) Unit 17, TRACT "E" (5.39 acres) TRACT "F" (6.41 acres) TRACT "G" (18.09 acres) TRACT "H" (6.88 acres) TRACT "I" (10.91 acres) TRACT "J" (9.41 acres) TRACT "K" (4.35 acres) TRACT "L" (13.61 acres)	Dec. 12, 1968
82	MULTIPLE BLOCK CC, COMMERCIAL BLOCK P, COMMERCIAL TRACT Q, PORTIONS OF BLOCKS 38 and 49 AND ALL OF BLOCKS 66 thru 76 UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 17, Block 38, (lots 38 thru 43) Block 49, (lots 28 thru 51) Block 66, (lots 1 thru 19) Block 67, (lots 1 thru 19) Block 68, (lots 1 thru 13) Block 69, (lots 1 thru 14) Block 70, (lots 1 thru 38) Block 71, (lots 1 thru 27) Block 72, (lots 1 thru 24) Block 73, (lots 1 thru 22) Block 74, (lots 1 thru 18) Block 75, (lots 1 thru 46) Block 76, (lots 1 thru 16) Block P, (lots 1 thru 30) Block CC, (lots 1 thru 30) Unit 17, TRACT Q (22.75 acres)	Jan. 6, 1969
83	TRACT R, COMMERCIAL BLOCK S, MULTIPLE BLOCK DD, PORTIONS OF BLOCKS 58, 60 and ALL OF BLOCKS 66 THRU 84, UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 17, Block 58, (lots 23 thru 35) Block 60, (lots 47 thru 62) Block 77, (lots 1 thru 8) Block 78, (lots 1 thru 10) & (lots 15 thru 28) Block 79, (lots 1 thru 25) Block 80, (6.04 acres) undivided Block 81, (lots 1 thru 24) Block 82, (lots 1 thru 15) Block 83, (lots 1 thru 31) Block 84, (lots 1 thru 45) Block S, (lots 1 thru 25) Block DD, (lots 1 thru 25)	March 6, 1969

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84	COMMERCIAL BLOCK T, MULTIPLE BLOCK TT, AND BLOCKS 85 THRU 112 UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	April 16, 1969
	Unit 17, Block 85, (lots 1 thru 38)	
	Block 86, (lots 1 thru 34)	
	Block 87, (lots 1 thru 30)	
	Block 88, (lots 1 thru 19)	
	Block 89, (lots 1 thru 6)	
	Block 90, (lots 1 thru 21)	
	Block 91, (lots 1 thru 33)	
	Block 92, (lots 1 thru 24)	
	Block 93, (lots 1 thru 22)	
	Block 94, (lots 1 thru 29)	
	Block 95, (lots 1 thru 6)	
	Block 96, (lots 1 thru 28)	
	Block 97, (lots 1 thru 27)	
	Block 98, (lots 1 thru 26)	
	Block 99, (lots 1 thru 32)	
	Block 100, (lots 1 thru 23)	
	Block 101, (lots 1 thru 23)	
	Block 102, (lots 1 thru 35)	
	Block 103, (lots 1 thru 25)	
	Block 104, (lots 1 thru 37)	
	Block 105, (lots 1 thru 20)	
	Block 106, (lots 1 thru 19)	
	Block 107, (lots 1 thru 34)	
	Block 108, (lots 1 thru 26)	
	Block 109, (lots 1 thru 24)	
	Block 110, (lots 1 thru 29)	
	Block 111, (lots 1 thru 30)	
	Block 112, (lots 1 thru 29)	
	Block T, (lots 1 thru 23)	
	Block TT, (lots 1 thru 24)	
85	BLOCKS 113 THRU 128, UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	April 16, 1969
	Unit 17, Block 113, (lots 1 thru 33)	
	Block 114, (lots 1 thru 42)	
	Block 115, (lots 1 thru 18)	
	Block 116, (lots 1 thru 27)	
	Block 117, (lots 1 thru 28)	
	Block 118, (lots 1 thru 17)	
	Block 119, (lots 1 thru 18) and (lots 20 thru 35)	
	Block 120, (lots 1 thru 40)	
	Block 121, (lots 1 thru 42)	
	Block 122, (lots 1 thru 16)	
	Block 123, (lots 1 thru 16)	
	Block 124, (lots 1 thru 23)	
	Block 125, (lots 1 thru 16)	
	Block 126, (lots 1 thru 20)	
	Block 128, (lots 1 thru 40)	
86	BLOCKS 129 THRU 153, UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 12, 1969
	Unit 17, Block 129, (lots 1 thru 26)	
	Block 130, (lots 1 thru 27)	
	Block 131, (lots 1 thru 40)	
	Block 132, (lots 1 thru 17)	
	Block 133, (lots 1 thru 17)	
	Block 134, (lots 1 thru 14)	
	Block 135, (lots 1 thru 14)	
	Block 136, (lots 1 thru 20)	
	Block 137, (lots 1 thru 28)	
	Block 138, (lots 1 thru 37)	
	Block 139, (lots 1 thru 19)	
	Block 140, (lots 1 thru 17)	
	Block 141, (lots 1 thru 16)	
	Block 142, (lots 1 thru 12)	
	Block 143, (lots 1 thru 16)	
	Block 144, (lots 1 thru 22)	
	Block 145, (lots 1 thru 21)	
	Block 146, (lots 1 thru 22)	
	Block 147, (lots 1 thru 43)	
	Block 148, (lots 1 thru 28)	
	Block 149, (lots 1 thru 19)	
	Block 150, (lots 1 thru 42)	
	Block 151, (lots 1 thru 40)	
	Block 152, (lots 1 thru 34)	
	Block 153, (lots 1 thru 25)	
87	TRACT P, BLOCKS 91 THRU 116, UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 12, 1969
	Unit 13, Block 91, (lots 1 thru 16)	
	Block 92, (lots 1 thru 26)	
	Block 93, (lots 1 thru 13)	
	Block 94, (lots 1 thru 26)	
	Block 95, (lots 1 thru 37)	
	Block 96, (lots 1 thru 39)	
	Block 97, (lots 1 thru 19)	
	Block 98, (lots 1 thru 21)	
	Block 99, (lots 1 thru 26)	

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PAGE No.	DESCRIPTION	FILING DATE
87	Block 100, (lots 1 thru 26)	
	Block 101, (lots 1 thru 27)	
	Block 102, (lots 1 thru 22)	
	Block 103, (lots 1 thru 30)	
	Block 104, (lots 1 thru 29)	
	Block 105, (lots 1 thru 20)	
	Block 106, (lots 1 thru 33)	
	Block 107, (lots 1 thru 32)	
	Block 108, (lots 1 thru 78) and (lots 80 thru 84)	
	Block 109, (lots 1 thru 3) and (lots 5 thru 24)	
	Block 110, (lots 1 thru 20)	
	Block 111, (lots 1 thru 23)	
	Block 112, (lots 1 thru 22)	
	Block 113, (lots 1 thru 5)	
	Block 114, (lots 1 thru 12)	
	Block 115, (lots 1 thru 29)	
	Block 116, (lots 1 thru 37)	
88	MULTIPLE BLOCK SS, COMMERCIAL BLOCK S, AND BLOCKS 117 THRU 122, UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 12, 1969
	Unit 13, Block 117, (lots 1 thru 35)	
	Block 118, (lots 1 thru 20)	
	Block 119, (lots 1 thru 5)	
	Block 120, (lots 1 thru 18)	
	Block 121, (lots 1 thru 20)	
	Block 122, (lots 1 thru 34)	
	Block S, (lots 1 thru 36)	
	Block SS, (lots 1 thru 33)	
89	BLOCKS 46 THRU 53, UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	June 4, 1969
	Unit 11, B/A Block 46, (lots 1 thru 24) (25 thru 51 vacated 5/25/72)	
	B/A Block 47, (lots 1 thru 18)	
	B/A Block 48, (lots 1 thru 35)	
	B/A Block 49, (lots 1 thru 25)	
	B/A Block 50, (lots 1 thru 8) and (lots 11 thru 28)	
	Block 51, (lots 1 thru 55)	
	Block 52, (lots 1 thru 41) Vacated 5/25/72	
	Block 53, (lots 1 thru 11)	
90	REPLAT PORTIONS OF UNITS FIVE, EIGHT, TWELVE, THIRTEEN, SIXTEEN, AND SEVENTEEN, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	July 18, 1969
	Unit 5, Block 70, (lots 79A, 88A thru 91A) & 97A	
	Unit 8, Block 80, (lots 59 & 60)	
	Block 81, (lots 49 & 50)	
	Block 82, (lots 41 & 42)	
	Block 83, (lots 33 & 34)	
	Block 84, (lots 23 & 24)	
	Block 85, (lots 21 thru 26)	
	Unit 8, PROPOSED PARK (19.52 acres)	
	Unit 12, Block 32, (lots 2A, and 144 thru 146)	
	Unit 13, Block 29, (lot 88)	
	Unit 13, Block 109, (lots 35 thru 38)	
	Unit 16, Block "O" (lots 1 thru 8)	
	Unit 17, Block 119, (lot 19A)	
95	BLOCKS 154 THRU 170, UNIT SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	July 18, 1969
	Unit 17, Block 154, (lots 7 thru 16)	
	Block 155, (lots 1 thru 21)	
	Block 156, (lots 1 thru 7)	
	Block 157, (lots 1 thru 14)	
	Block 158, (lots 1 thru 19)	
	Block 159, (lots 1 thru 20)	
	Block 160, (lots 1 thru 22)	
	Block 161, (lots 1 thru 24)	
	Block 162, (lots 1 thru 25)	
	Block 163, (lots 1 thru 6) & (lots 8 thru 13)	
	Block 164, (lots 1 thr[illegible]4)	
	Block 165, (lots 1 thru [illegible]) & (lots 5 thru 8)	
	Block 166, (lots 1 thru [illegible]) & (lots 24 thru 28)	
	Block 167, (lots 2 thru 36)	
	Block 168, (lots 1 thru 12)	
	Block 169, (lots 1 thru 10)	
	Block 170, (lots 1 thru 8)	
98	TRACTS "T", "U", "V", "W", "X" AND BLOCKS 123 thru 146, UNIT THIRTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Oct. 14, 1969
	Unit 13, Block 123, (lots 1 thru 10)	
	Block 124, (lots 1 thru 9)	
	Block 125, (lots 1 thru 11)	
	Block 126, (lots 1 thru 20)	
	Block 127, (lots 1 thru 15)	
	Block 128, (lots 1 thru 12) & (lots 15 thru 18)	
	Block 129, (lots 1, 2, & 3)	
	Block 130, (lots 1 thru 14)	
	Block 131, (lots 1 thru 27)	
	Block 132, (lots 1 thru 36)	
	Block 133, (lots 1 thru 21)	

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PAGE No	DESCRIPTION	FILING DATE
98	Block 134, (lots 1 thru 10) & (14 thru 23) Block 135, (lots 1 thru 4) & (lots 6 & 7) Block 136, (lots 1 thru 36) Block 137, (lots 1 thru 7) Block 138, (lots 1 thru 63) Block 139, (lots 1 thru 15) Block 140, (lots 2 thru 11) Block 141, (lots 1 thru 13) Block 142, (lots 1 thru 23) Block 143, (lots 1 thru 4) & (lots 6 thru 13) & (lots 15 thru 77) Block 144, (lots 1 thru 39) & (lots 42 thru 49) Block 145, (lots 1 thru 20) Block 146, (lots 1 thru 13) Unit 13, TRACT T (23.23 acres) TRACT U (9.65 acres) TRACT V (9.45 acres) TRACT W (3.97 acres) TRACT X (1.05 acres)	
104	REPLAT OF PORTIONS OF BLOCKS 46 THRU 55, UNIT SEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Jan. 15, 1971
	Unit 7, Block 46, lots (1A thru 3A) (1B thru 3B) (5A thru 7A) (5B thru 7B) (9A, 9B, & 9C) (17A thru 19A) (17B thru 19B) (25A & 25B) (28A thru 29A) (28B thru 29B) (31A thru 38A) (31B thru 38B) Block 47, lots (2A thru 5A) (2B thru 5B) (9A, 9B, & 9C) (11A thru 14A) (11B thru 14B) (17A thru 22A) (17B thru 22B) (25A & 25B) (31A, 31B, & 31C) (32A thru 39A) (32B thru 39B) Block 48, lots (2A & 2B) (8A & 8B) (9A, 9B, & 9C) (10A thru 11A) (10B thru 11B) (14A thru 19A) (14B thru 19B) (26A & 26B) (27A, 27B, & 27C) (28A & 28B) (30A, & 30B) Block 49, lots (1A thru 9A) (1B thru 9B) (11A, 11B, 11C) (12A, 12B, 12C, & 12D) (13A thru 20A) (13B thru 20B) (22A & 22B) (23A, 23B, & 23C) (24A & 25A) (24B & 25B) (34A, & 35A) (34B & 35B) Block 50, lots (1A, & 1B) (7A & 7B) (10A thru 12A) (10B thru 12B) (13A, 13B, & 13C) (14A thru 23A) (14B thru 23B) (24A, 24B, & 24C) (25A & 26A) (25B & 26B) (34A & 34B) (36A & 36B) Block 51, lots (4A & 4B) (11A & 12A) (11B & 12B) (13A, 13B, & 13C) (14A thru 17A) (14B thru 17B) (20A thru 23A) (20B thru 23B) (24A, 24B, & 24C) (25A thru 27A) (25B thru 27B) (29A & 30A) (29B & 30B) (32A & 32B) (36 – UTILITY TRACT) Unit 7, Block 52, lots (1A & 1B) (3A & 3B) (6A thru 11A) (6B thru 11B) (13A & 14A) (13B & 14B) (17A & 17B) (20A & 20B) (22A & 23A) (22B & 23B) (24A, 24B, & 24C) (29A & 29B) (32A & 32B) (36A, & 36B) Block 53, lots (1A thru 3A) (1B thru 3B) (6A & 6B) (11A thru 13A) (11B thru 13B) (14A, 14B, & 14C) (17A & 18A) (17B & 18B) (20A & 20B) (24A & 25A) (24B & 25B) (28A thru 32A) (28 B thru 32B) (34A thru 36A) (34B thru 36B) Block 54, lots (1A & 2A) (1B & 2B) (5A & 5B) (9A thru 15A) (9B thru 15B) (18A, 18B, & 18C) (19A, 19B, 19C) (20A thru 24A) (20B thru 24B) (31A thru 36A) (31B thru 36B) Block 55, lots (1A thru 5A) (1B thru 5B) (7A & 8A) (7B & 8B) Block 55, lots (13A & 14A) (13B & 14B) (18A, 18B, & 18C) (19A thru 23A) (19B thru 23B) (26A & 26B) (28A thru 37A) (28B thru 3[illegible])	
105	REPLAT OF BLOCKS 29, 30 AND 77 THRU 84 AND A PORTION OF BLOCKS 20, 31 AND 32, UNIT TWELVE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Jan. 15, 1971
	Unit 12, Block 20A, (lots 1 thru 58) Block 31A, (lots 1 thru 29) Block 32A, (lots 1 thru 26) Block 91, (lots 1 thru 17) Block 92, (lots 1 thru 17) Block 93, (lots 1 thru 14) Block 94, (lots 1 thru 42) Block 95, (lots 1 thru 43) Block 96, (lots 1 thru 28) Block 97, (lots 1 thru 24) Block 98, (lots 1 thru 20) Block 99, (lots 1 thru 17) Block 100, (lots 1 thru 20) Block 101, (lots 1 thru 44) Block 102, (lots 1 thru 49) Block 103, (lots 1 thru 29)	

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PAGE No.	DESCRIPTION	FILING DATE
105	Block 104, (lots 1 thru 14) Block 105, (lots 1 thru 30) Block 106, (lots 1 thru 13) Block 107, (lots 1 thru 17) Block 108, (lots 1 thru 22) Block 109, (lots 1 thru 32)	
107	REPLAT, PORTIONS OF UNITS THIRTEEN & SEVENTEEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Sept. 16, 1971
	Unit 13, Block 108, (lots 90, 91, & 92) Unit 17, TRACT "U" (commercial) (14.19 acres)	
110	REPLAT, LOT 6, BLOCK 32, UNIT 11, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Feb. 17, 1972
	(**REPLATTED** ON PAGE 124 Book No. 1)	
112	BLOCKS 54 THRU 64, TRACTS "AA-1" and "BB-1", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 25, 1972
	THIS PAGE VACATED (VACATION FILED 6/12/73)	
113	BLOCKS 65 THRU 73, TRACTS "A-1" AND "B-1", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 25, 1972
	THIS PAGE VACATED (VACATION FILED 6/12/73)	
114	BLOCKS 74 THRU 83, A PORTION OF BLOCK BB TRACTS "C-1" AND "CC-1", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 25, 1972
	Unit 11, Block 74, (lots 1 thru 30) Block 75, (lots 1 thru 13) Block 76, (lots 1 thru 27) Block 77, (lots 1 thru 34) Block 78, (lots 1 thru 22) Block 79, (lots 1 thru 22) Block 80, (lots 1 thru 21) Block 81, (lots 1 thru 30) Block 82, (lots 1 thru 28) Block 83, (lots 1 thru 23) Block BB, (lots 42 thru 59) TRACT "C-1" (Reserved) (5.14 acres) TRACT "CC-1" (PATIO HOME SITES) (17.98 acres)	
116	BLOCKS 84 THRU 99, UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 25, 1972
	Unit 11, Block 84, (lots 1 thru 35) Block 85, (lots 1 thru 50) Block 86, (lots 1 thru 12) Block 87, (lots 1 thru 27) Block 88, (lots 1 thru 16) Block 89, (lots 1 thru 34) Block 90, (lots 1 thru 25) Block 91, (lots 1 thru 34) Block 92, (lots 1 thru 22) Block 93, (lots 1 thru 64) Block 94, (lots 1 thru 25) Block 95, (lots 1 thru 26) Block 96, (lots 1 thru 22) Block 97, (lots 1 thru 18) Block 98, (lots 1 thru 12) Block 99, (lots 1 thru 10)	
117	BLOCKS 100 THRU 111, TRACTS "D-1" AND "DD-1", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	May 25, 1972
	Unit 11, Block 100, (lots 1 thru 24) Block 101, (lots 1 thru 40) Block 102, (lots 1 thru 17) Block 103, (lots 1 thru 18) Block 104, (lots 1 thru 12) Block 105, (lots 1 thru 12) Block 106, (lots 1 thru 6) Block 107, (lots 1 thru 20) Block 108, (lots 1 thru 25) Block 109, (lots 1 thru 20) Block 110, (lots 1 thru 19) Block 111, (lots 1 thru 21) TRACT "D-1" (Tentative High School Site) (20.92 acres) TRACT "DD-1" (Multiple) (10.19 acres) LISBON PARK (0.92 acres)	
118	BLOCKS 112 THRU 126, TRACT "E-1", UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	June 19,1972
	Unit 11, Block 112, (lots 1 thru 14) Block 113, (lots 1 thru 28) Block 114, (lots 1 thru 39) Block 115, (lots 1 thru 17) Block 116, (lots 1 thru 34) Block 117, (lots 1 thru 32) Block 118, (lots 1 thru 21)	

Continued on next page

RIO RANCHO ESTATES
PLAT BOOK No. 1

PAGE No.	DESCRIPTION	FILING DATE
118	Block 119, (lots 1 thru 21)	
	Block 120, (lots 1 thru 19)	
	Block 121, (lots 1 thru 16)	
	Block 122, (lots 1 thru 18)	
	Block 123, (lots 1 thru 16)	
	Block 124, (lots 1 thru 13)	
	Block 125, lots 1 thru 26)	
	Block 126, (lots 1 thru 19)	
	TRACT "E-1" (Tentative Elementary School Site) (11.01 acres)	
	SUGAR PARK (2.03 acres)	
124	REPLAT PORTION OF BLOCK 32, UNIT 11, AND PORTION OF BLOCK 78, UNIT 17, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	June 19, 1972
	Unit 11, Block 32, (lots 6C & 6D)	
	Unit 17, Block 78, (lots 11A thru 14A)	
125	REPLAT, PORTIONS OF UNITS 12 & 17, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	Sept. 15, 1972
	Unit 12, Block 87, (lots 12A & 12B)	
	Block 88, (lots 3A & 3B)	
	Unit 17, Block 2, (lots 3A thru 8A)	
137	REPLAT PORTIONS OF UNIT ELEVEN, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO	June 12, 1973
	Unit 11, Block 101, (lots 8A thru 22A)	
	Block 117, (lots 16A thru 23A)	
	Block 118, (lots 6A thru 8A) & (lots 13A thru 15A)	
	Block 125, (lots 1A thru 3A) & (lots 24A thru 26A)	
	TRACT "D-1" (Tentative High School Site) (20.92 acres)	
	TRACT "DD-1" (Multiple) (10.19 acres)	

RIO RANCHO ESTATES
PLAT BOOK No. 2

PAGE No.	DESCRIPTION	FILING DATE
1	BLOCKS 1 THRU 20 AND TRACT "A", UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Aug. 11, 1969
	Unit 23, Block 1, (lots 1 thru 42)	
	Block 2, (lots 1 thru 40)	
	Block 3, (lots 1 thru 44)	
	Block 4, (lots 1 thru 40)	
	Block 5, (lots 1 thru 44)	
	Block 6, (lots 1 thru 40)	
	Block 7, (lots 1 thru 44)	
	Block 8, (lots 1 thru 44)	
	Block 9, (lots 1 thru 58)	
	Block 10, (lots 1 thru 28)	
	Block 11, (lots 1 thru 40)	
	Block 12, (lots 1 thru 34)	
	Block 13, (lots 1 thru 23)	
	Block 14, (lots 1 thru 31)	
	Block 15, (lots 1 thru 38)	
	Block 16, (lots 1 thru 40)	
	Block 17, (lots 1 thru 40)	
	Block 18, (lots 1 thru 40)	
	Block 19, (lots 1 thru 37)	
	Block 20, (lots 1 thru 36)	
	38.71 Acres Tract A	
2	BLOCKS 21 THRU 44, COMMERCIAL TRACT "B", TRACTS "E" AND "F", COMMERCIAL BLOCK C & MULTIPLE BLOCKS CC & DD, UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Aug. 11, 1969
	Unit 23, Block 21, (lots 1 thru 25)	
	Block 22, (lots 1 thru 21)	
	Block 23, (lots 1 thru 26)	
	Block 24, (lots 1 thru 35)	
	Block 25, (lots 1 thru 5)	
	Block 26, lots 1 thru 18)	
	Block 27, (lots 1 thru 20)	
	Block 28, (lots 1 thru 54)	
	Block 29, (lots 1 thru 33)	
	Block 30, (lots 1 thru 35)	
	Block 31, (lots 1 thru 5)	
	Block 32, (lots 1 thru 41)	
	Block 33, (lots 1 thru 46)	
	Block 34, (lots 1 thru 46)	
	Block 35, (lots 1 thru 46)	
	Block 36, (lots 1 thru 54)	
	Block 37, (lots 1 thru 24)	

Continued

RIO RANCHO ESTATES
PLAT BOOK No. 2

PAGE No.	DESCRIPTION	FILING DATE
2	Block 38, (lots 1 thru 24)	
	Block 39, (lots 1 thru 54)	
	Block 40, (lots 1 thru 44)	
	Block 41, (lots 1 thru 42)	
	Block 42, (lots 1 thru 25)	
	Block 43, (lots 1 thru 23)	
	Block 44, (lots 1 thru 8)	
	Commercial Tract B, (18.36 Acres)	
	Tract E, (14.50 Acres)	
	Tract F, (10.61 Acres)	
	Commercial Block C, (lots 1 thru 29)	
	Multiple Block CC, (lots 1 thru 20)	
	Multiple Block DD, (lots 1 thru 7)	
3	BLOCKS 1 THRU 26, UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Sept. 15, 1969
	Unit 22, Block 1, (lots 1 thru 103)	
	Block 2, (lots 1 thru 21)	
	Block 3, (lots 1 thru 22)	
	Block 4, (lots 1 thru 22)	
	Block 5, (lots 1 thru 22)	
	Block 6, (lots 1 thru 23)	
	Block 7, (lots 1 thru 13)	
	Block 8, (lots 1 thru 28)	
	Block 9, (lots 5 thru 33)	
	Block 10, (lots 1 thru 4)	
	Block 11, (lots 1 thru 11)	
	Block 12, (lots 1 thru 12)	
	Block 13, (lots 1 thru 34)	
	Block 14, (lots 1 thru 38)	
	Block 15, (lots 1 thru 34)	
	Block 16, (lots 1 thru 28)	
	Block 17, (lots 1 thru 16)	
	Block 18, (lots 1 thru 43)	
	Block 19, (lots 1 thru 11)	
	Block 20, (lots 1 thru 18)	
	Block 21, (lots 1 thru 36)	
	Block 22, (lots 1 thru 36)	
	Block 23, (lots 1 thru 36)	
	Block 24, (lots 1 thru 35)	
	Block 25, (lots 1 thru 38)	
	Block 26, (lots 1 thru 28)	
4	BLOCK AA, TRACT A AND BLOCKS 27 THRU 43, UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Sept. 15, 1969
	Unit 22, Block 27, (lots 1 thru 29)	
	Block 28, (lots 1 thru 3)	
	Block 29, (lots 1 thru 36)	
	Block 30, (lots 1 thru 50)	
	Block 31, (lots 1 thru 29)	
	Block 32, (lots 1 thru 40)	
	Block 33, (lots 1 thru 40)	
	Block 34, (lots 1 thru 40)	
	Block 35, (lots 1 thru 40)	
	Block 36, (lots 1 thru 39)	
	Block 37, (lots 1 thru 61	
	Block 38, (lots 1 thru 76)	
	Block 39, (lots 1 thru 71)	
	Block 40, (lots 1 thru 64)	
	Block 41, (lots 1 thru 36)	
	Block 42, (lots 1 thru 47)	
	Block 43, (lots 1 thru 41)	
	Block AA, (lots 1 thru 8)	
	Tract A, (1.26 Acres)	
5	BLOCKS 45 THRU 75, TRACT "G" AND MULTIPLE BLOCKS EE & FF, UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Oct. 16, 1969
	Unit 23, Block 45, (lots 1 thru 14)	
	Block 46, (lots 1 thru 7)	
	Block 47, (lots 1 thru 12)	
	Block 48, (lots 1 thru 33)	
	Block 49, (lots 1 thru 42)	
	Block 50, (lots 1 thru 50)	
	Block 51, (lots 1 thru 40)	
	Block 52, (lots 1 thru 73)	
	Block 53, (lots 1 thru 65)	
	Block 54, (lots 1 thru 77)	
	Block 55, (lots 1 thru 17)	
	Block 56, (lots 1 thru 5)	
	Block 57, (lots 1 thru 20)	
	Block 58, (lots 1 thru 29)	
	Block 59, (lots 1 thru 37)	
	Block 60, (lots 1 thru 45)	
	Block 61, (lots 1 thru 53)	
	Block 62, (lots 1 thru 41)	
	Block 63, (lots 1 thru 43)	
	Block 64, (lots 1 thru 5)	
	Block 65, (lots 1 thru 15)	
	Block 66, (lots 1 thru 10)	
	Block 67, (lots 1 thru 31)	
	Block 68, (lots 1 thru 45)	

Continued on next page

PAGE No.	DESCRIPTION	FILING DATE
5	Block 69, (lots 1 thru 10)	
	Block 70, (lots 1 thru 10)	
	Block 71, (lots 1 thru 60)	
	Block 72, (lots 1 thru 30)	
	Block 73, (lots 1 thru 5)	
	Block 74, (lots 1 thru 5)	
	Block 75, (lots 1 thru 28)	
	Tract G, (55.68 Acres)	
	Multiple Block EE, (1.22 Acres)	
	Multiple Block FF, (2.00 Acres)	
6	BLOCKS 44 THRU 63, TRACT "B" & COMMERCIAL TRACT "C", UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Oct. 16, 1969
	Unit 22, Block 44, (lots 1 thru 13)	
	Block 45, (lots 1 thru 31)	
	Block 46, (lots 1 thru 84)	
	Block 47, (lots 1 thru 55)	
	Block 48, (lots 1 thru 20)	
	Block 49, (lots 1 thru 21)	
	Block 50, (lots 1 thru 24)	
	Block 51, (lots 1 thru 18)	
	Block 52, (lots 1 thru 35)	
	Block 53, (lots 1 thru 40)	
	Block 54, (lots 1 thru 28)	
	Block 55, (lots 1 thru 42)	
	Block 56, (lots 1 thru 14)	
	Block 57, (lots 1 thru 22)	
	Block 58, (lots 1 thru 21)	
	Block 59, (lots 1 thru 17)	
	Block 60, (lots 1 thru 18)	
	Block 61, (lots 1 thru 21)	
	Block 62, (lots 1 thru 36)	
	Block 63, (lots 1 thru 10)	
	Tract B, (21.11 Acres)	
	Commercial Tract C, (9.82 Acres)	
7	BLOCKS 64 THRU 88 AND COMMERCIAL TRACT "D", UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Nov. 14, 1969
	Unit 22, Block 64, (lots 1 and 2)	
	Block 65, (lots 1 thru 20)	
	Block 66, (lots 1 thru 38)	
	Block 67, (lots 1 thru 20)	
	Block 68, (lots 1 thru 54)	
	Block 69, (lots 1 thru 20)	
	Block 70, (lots 1 thru 36)	
	Block 71, (lots 1 thru 14)	
	Block 72, (lots 1 thru 74)	
	Block 73, (lots 1 thru 34)	
	Block 74, (lots 1 thru 35)	
	Block 75, (lots 1 thru 45)	
	Block 76, (lots 1 thru 51)	
	Block 77, (lots 1 thru 14)	
	Block 78, (lots 1 thru 24)	
	Block 79, (lots 1 thru 70)	
	Block 80, (lots 1 thru 52)	
	Block 81, (lots 1 thru 25)	
	Block 82, (lots 1 thru 54)	
	Block 83, (lots 1 thru 74)	
	Block 84, (lots 1 thru 36)	
	Block 85, (lots 1 thru 33)	
	Block 86, (lots 1 thru 44)	
	Block 87, (lots 1 thru 63)	
	Block 88, (lots 1 thru 50)	
	Commercial Tract D, (8.29 Acres)	
8	BLOCKS 1 THRU 36, COMMERCIAL TRACTS A, B, C & D, MULTIPLE TRACTS AA & BB, UNIT TWENTY-ONE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Nov. 17, 1969
	Unit 21, Block 1, (lots 1 thru 22)	
	Block 2, (lots 1 thru 21)	
	Block 3, (lots 1 thru 25)	
	Block 4, (lots 1 thru 36)	
	Block 5, (lots 1 thru 28)	
	Block 6, (lots 1 thru 40)	
	Block 7, (lots 1 thru 38)	
	Block 8, (lots 1 thru 34)	
	Block 9, (lots 1 thru 36)	
	Block 10, (lots 1 thru 36)	
	Block 11, (lots 1 thru 26)	
	Block 12, (lots 1 thru 50)	
	Block 13, (lots 1 thru 42)	
	Block 14, (lots 1 thru 25)	
	Block 15, (lots 1 thru 33)	
	Block 16, (lots 1 thru 33)	
	Block 17, (lots 1 thru 36)	
	Block 18, (lots 1 thru 34)	
	Block 19, (lots 1 thru 30)	
	Block 20, (lots 1 thru 52)	
	Block 21, (lots 1 thru 52)	
8	Block 22, (lots 1 thru 58)	
	Block 23, (lots 1 thru 66)	
	Block 24, (lots 1 thru 74)	
	Block 25, (lots 1 thru 21)	
	Block 26, (lots 1 thru 20)	
	Block 27, (lots 1 thru 19)	
	Block 28, (lots 1 thru 18)	
	Block 29, (lots 1 thru 20)	
	Block 30, (lots 1 thru 6)	
	Block 31, (lots 1 thru 44)	
	Block 32, (lots 1 thru 38)	
	Block 33, (lots 1 thru 50)	
	Block 34, (lots 1 thru 48)	
	Block 35, (lots 1 thru 25)	
	Block 36, (lots 1 thru 18)	
	Commercial Tracts A, B, C & D	
	Multiple Tracts AA & BB	
9	BLOCKS 89 THRU 100, COMMERCIAL TRACTS "E, F, G, & H", MULTIPLE TRACTS "BB", "CC" & "DD", UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Dec. 9, 1969
	Unit 22, Block 89, (lots 1 thru 39)	
	Block 90, (lots 1 thru 39)	
	Block 91, (lots 1 thru 13)	
	Block 92, (lots 1 thru 37)	
	Block 93, (lots 1 thru 29)	
	Block 94, (lots 1 thru 29)	
	Block 95, (lots 1 thru 58)	
	Block 96, (lots 1 thru 26)	
	Block 97, (lots 1 thru 33)	
	Block 98, (lots 1 thru 42)	
	Block 99, (lots 1 thru 57)	
	Block 100, (lots 1 thru 84)	
	Tracts E, F, G & H	
	Tracts BB, CC & DD	
10	BLOCKS 100 THRU 116, MULTIPLE TRACTS EE, FF, GG, & HH, UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Dec. 9, 1969
	Unit 22, Block 100, (lots 85 thru 91)	
	Block 101, (lots 1 thru 28)	
	Block 102, (lots 1 thru 21)	
	Block 103, (lots 1 thru 13)	
	Block 104, (lots 1 thru 26)	
	Block 105, (lots 1 thru 6)	
	Block 106, (lots 1 thru 31)	
	Block 107, (lots 1 thru 36)	
	Block 108, (lots 1 thru 18)	
	Block 109, (lots 1 thru 14)	
	Block 110, (lots 1 thru 38)	
	Block 111, (lots 1 thru 91)	
	Block 112, (lots 1 thru 48)	
	Block 113, (lots 1 thru 10)	
	Block 114, (lots 1 thru 8)	
	Block 115, (lots 1 thru 25)	
	Block 116, (lots 1 thru 23)	
	Tracts EE, FF, GG & HH	
11	BLOCKS 37 THRU 53, MULTIPLE TRACTS "CC, DD, EE, FF, & GG" & COMMERCIAL TRACT E, UNIT TWENTY-ONE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Dec. 9, 1969
	Unit 21, Block 37, (lots 1 thru 45)	
	Block 38, (lots 1 thru 35)	
	Block 39, (lots 1 thru 23)	
	Block 40, (lots 1 thru 45)	
	Block 41, (lots 1 thru 38)	
	Block 42, (lots 1 thru 30)	
	Block 43, (lots 1 thru 56)	
	Block 44, (lots 1 thru 60)	
	Block 45, (lots 1 thru 60)	
	Block 46, (lots 1 thru 62)	
	Block 47, (lots 1 thru 62)	
	Block 48, (lots 1 thru 48)	
	Block 49, (lots 1 thru 45)	
	Block 50, (lots 1 thru 28)	
	Block 51, (lots 1 thru 45)	
	Block 52, (lots 1 thru 33)	
	Block 53, (lots 1 thru 20)	
	Tract E	
	Tracts CC, DD, EE, FF & GG	
12	PORTIONS OF BLOCKS 35 AND 36, BLOCKS 54 THRU 72 AND MULTIPLE BLOCK "HH", UNIT TWENTY-ONE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Dec. 16, 1969
	Unit 21, Block 35, (lots 26 thru 40)	
	Block 36, (lots 19 thru 77)	
	Block 54, (lots 1 thru 20)	
	Block 55, (lots 1 thru 55)	
	Block 56, (lots 1 thru 55)	
	Block 57, (lots 1 thru 46)	
	Block 58, (lots 1 thru 74)	
	Block 59, (lots 1 thru 50)	

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RIO RANCHO ESTATES
PLAT BOOK No. 2

PAGE No.	DESCRIPTION	FILING DATE
12	Block 60, (lots 1 thru 24) Block 61, (lots 1 thru 30) Block 62, (lots 1 thru 59) Block 63, (lots 1 thru 10) Block 64, (lots 1 thru 30) Block 65, (lots 1 thru 38) Block 66, (lots 1 thru 50) Block 67, (lots 1 thru 25) Block 68, (lots 1 thru 10) Block 69, (lots 1 thru 23) Block 70, (lots 1 thru 42) Block 71, (lots 1 thru 36) Block 72, (lots 1 thru 29) Block HH	
13	BLOCKS 76 THRU 93, COMMERCIAL TRACT "H", UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 23, Block 76, (lots 1 thru 31) Block 77, (lots 1 thru 30) Block 78, (lots 1 thru 71) Block 79, (lots 1 thru 59) Block 80, (lots 1 thru 132) Block 81, (lots 1 thru 28) Block 82, (lots 1 thru 17) Block 83, (lots 1 thru 31) Block 84, (lots 1 thru 46) Block 85, (lots 1 thru 29) Block 86, (lots 1 thru 26) Block 87, (lots 1 thru 73) Block 88, (lots 1 thru 20) Block 89, (lots 1 thru 20) Block 90, (lots 1 thru 20) Block 91, (lots 1 thru 35) Block 92, (lots 1 thru 45) Block 93, (lots 1 thru 48) Tract "H"	Jan. 20, 1970
14	BLOCKS 94 THRU 113, COMMERCIAL TRACTS I, J, K & L UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 23, Block 94, (lots 1 thru 20) Block 95, (lots 1 thru 23) Block 96, (lots 1 thru 36) Block 97, (lots 1 thru 49) Block 98, (lots 1 thru 28) Block 99, (lots 1 thru 28) Block 100, (lots 1 thru 14) Block 101, (lots 1 thru 14) Block 102, (lots 1 thru 17) Block 103, (lots 1 thru 75) Block 104, (lots 1 thru 28) Block 105, (lots 1 thru 37) Block 106, (lots 1 thru 42) Block 107, (lots 1 thru 35) Block 108, (lots 1 thru 19) Block 109, (lots 1 thru 31) Block 110, (lots 1 thru 38) Block 111, (lots 1 thru 28) Block 112, (lots 1 thru 40) Block 113, (lots 1 thru 16) Tracts I, J, K & L	Jan. 20, 1970
15	BLOCKS 1 THRU 16, COMMERCIAL TRACTS "A & B", MULTIPLE TRACT "AA", UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, MEW MEXICO Unit 24, Block 1, (lots 1 thru 22) Block 2, (lots 1 thru 11) Block 3, (lots 1 thru 34) Block 4, (lots 1 thru 71) Block 5, (lots 1 thru 63) Block 6, (lots 1 thru 13) Block 7, (lots 1 thru 30) Block 8, (lots 1 thru 41) Block 9, (lots 1 thru 28) Block 10, (lots 1 thru 65) Block 11, (lots 1 thru 59) Block 12, (lots 1 thru 26) Block 13, (lots 1 thru 17) Block 14, (lots 1 thru 50) Block 15, (lots 1 thru 29) Block 16, (lots 1 thru 36) Tracts A & B, & Tract AA	Jan. 20, 1970

RIO RANCHO ESTATES
PLAT BOOK No. 2

PAGE No.	DESCRIPTION	FILING DATE
16	REPL[illegible] OF UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO, AND REPLAT, PORTIONS OF CORRALES HEIGHTS & UNITS 7, 16 & 17, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO Unit 7, Block 33, (lots 86A & 87A) Unit 16, Block 26A, (lots 17A & 18A) Unit 17, Block 163, (lot 7A) Block 165, (lot 4A) Block 166, (lots 22A & 23A) Unit 22, Block 47, (lots 20A, 21A & 22A)	Jan. 20, 1970
17	BLOCKS 114 THRU 130 AND PORTIONS OF BLOCKS 56, 57, 64, 65, 66, 69, 70 & 73, MULTIPLE TRACT "GG", UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 23, Block 56, (lots 6 and 7) Block 57, (lots 21 thru 34) Block 64, (lots 6 thru 8) Block 65, (lots 16 thru 25) Block 66, (lots 11 thru 46) Block 69, (lots 11 thru 54) Block 70, (lots 11 thru 46) Block 73, (lots 6 thru 27) Block 114, (lots 1 thru 17) Block 115, (lots 1 thru 44) Block 116, (lots 1 thru 14) Block 117, (lots 1 thru 16) Block 118, (lots 1 thru 20) Block 119, (lots 1 thru 22) Block 120, (lots 1 thru 43) Block 121, (lots 1 thru 60) Block 122, (lots 1 thru 19) Block 123, (lots 1 thru 43) Block 124, (lots 1 thru 37) Block 125, (lots 1 thru 56) Block 126, (lots 1 thru 35) Block 127, (lots 1 thru 97) Block 128, (lots 1 thru 40) Block 129, (lots 1 thru 143) Block 130, (lots 1 thru 42) Tract GG	Feb. 19, 1970
18	BLOCKS 131 THRU 153, COMMERCIAL TRACTS "M" & "N", MULTIPLE TRACTS "HH", "II", "JJ" & "KK", UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, MEW MEXICO Unit 23, Block 131, (lots 1 thru 33) Block 132, (lots 1 thru 19) Block 133, (lots 1 thru 67) Block 134, (lots 1 thru 38) Block 135, (lots 1 thru 46) Block 136, (lots 1 thru 39) Block 137, (lots 1 thru 18) Block 138, (lots 1 thru 25) Block 139, (lots 1 thru 28) Block 140, (lots 1 thru 29) Block 141, (lots 1 thru 33) Block 142, (lots 1 thru 37) Block 143, (lots 1 thru 33) Block 144, (lots 1 thru 36) Block 145 (lots 1 thru 28) Block 146, (lots 1 thru 30) Block 147, (lots 1 thru 42) Block 148, (lots 1 thru 34) Block 149, (lots 1 thru 65) Block 150, (lots 1 thru 43) Block 151, (lots 1 thru 44) Block 152, (lots 1 thru 30) Block 153 (lots 1 thru 24) Tracts "M" & "N" Tracts "HH", "II", "JJ" & "KK"	Feb. 19, 1970
19	BLOCKS 17 THRU 31 AND PORTION OF BLOCK 32, UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 24, Block 17, (lots 1 thru 14) Block 18, (lots 1 thru 44) Block 19, (lots 1 thru 42) Block 20, (lots 1 thru 14) Block 21, (lots 1 thru 68) Block 22, (lots 1 thru 36) Block 23, (lots 1 thru 30) Block 24, (lots 1 thru 42) Block 25, (lots 1 thru 67) Block 26, (lots 1 thru 25) Block 27, (lots 1 thru 54) Block 28, (lots 1 thru 59) Block 29, (lots 1 thru 21) Block 30, (lots 1 thru 51) Block 31, (lots 1 thru 26) Block 32, (lots 1 thru 75)	Feb. 19, 1970

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PAGE No.	DESCRIPTION	FILING DATE
20	BLOCKS 1 THRU 24, COMMERCIAL TRACT "A", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 26, Block 1, (lots 1 thru 27) Block 2, (lots 1 thru 123) Block 3, (lots 1 thru 28) Block 4, (lots 1 thru 32) Block 5, (lots 1 thru 47) Block 6, (lots 1 thru 30) Block 7, (lots 1 thru 32) Block 8, (lots 1 thru 60) Block 9, (lots 1 thru 26) Block 10, (lots 1 thru 35) Block 11, (lots 1 thru 44) Block 12, (lots 1 thru 38) Block 13, (lots 1 thru 44) Block 14, (lots 1 thru 58) Block 15, (lots 1 thru 26) Block 16, (lots 1 thru 26) Block 17, (lots 1 thru 33) Block 18, (lots 1 thru 39) Block 19, (lots 1 thru 50) Block 20, (lots 1 thru 50) Block 21, (lots 1 thru 50) Block 22, (lots 1 thru 50) Block 23, (lots 1 thru 28) Block 24, (lots 1 thru 38) Tract "A"	Feb. 19, 1970
21	BLOCKS 25 THRU 35, COMMERCIAL TRACT "B", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, MEW MEXICO Unit 26, Block 25, (lots 1 thru 45) Block 26, (lots 1 thru 51) Block 27, (lots 1 thru 49) Block 28, (lots 1 thru 70) Block 29, (lots 1 thru 95) Block 30, (lots 1 thru 44) Block 31, (lots 1 thru 46) Block 32, (lots 1 thru 44) Block 33, (lots 1 thru 44) Block 34, (lots 1 thru 46) Block 35, (lots 1 thru 57) Tract "B"	March 12, 1970
22	BLOCKS 36 THRU 51, TRACTS "C" & "D", COMMERCIAL TRACTS "E" & "F", MULTIPLE TRACTS "AA" & "BB", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 26, Block 36, (lots 1 thru 40) Block 37, (lots 1 thru 19) Block 38, (lots 1 thru 40) Block 39, (lots 1 thru 24) Block 40, (lots 1 thru 9) Block 41, (lots 1 thru 26) Block 42, (lots 1 thru 32) Block 43, (lots 1 thru 15) Block 44, (lots 1 thru 132) Block 45, (lots 1 thru 37) Block 46, (lots 1 thru 48) Block 47, (lots 1 thru 50) Block 48, (lots 1 thru 31) Block 49, (lots 1 thru 38) Block 50, (lots 1 thru 16) Block 51, (lots 1 thru 38) Tracts "C", "D", "E" & "F" Tracts "AA" & "BB"	March 12, 1970
23	BLOCKS 52 THRU 73, MULTIPLE TRACTS "CC" AND "DD,", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 26, Block 52, (lots 1 thru 55) Block 53, (lots 1 thru 46) Block 54, (lots 1 thru 41) Block 55, (lots 1 thru 43) Block 56, (lots 1 thru 56) Block 57, (lots 1 thru 15) Block 58, (lots 1 thru 9) Block 59, (lots 1 thru 20) Block 60, (lots 1 thru 42) Block 61, (lots 1 thru 44) Block 62, (lots 1 thru 25) Block 63, (lots 1 thru 63) Block 64, (lots 1 thru 38) Block 65, (lots 1 thru 59) Block 66, (lots 1 thru 27) Block 67, (lots 1 thru 42)	March 12, 1970
23	Block 68, (lots 1 thru 45) Block 69, (lots 1 thru 23) Block 70, (lots 1 thru 32) Block 71, (lots 1 thru 31) Block 72, (lots 1 thru 33) Block 73, (lots 1 thru 111) Tracts "CC" & "DD"	
24	BLOCKS 33 THRU 45 AND PORTIONS OF BLOCKS 32, 44 & 46, MULTIPLE TRACTS "BB" & "CC", COMMERCIAL TRACT "C", UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 24, Block 32, (lots 76 thru 99) Block 33, (lots 1 thru 51) Block 34, (lots 1 thru 20) Block 35, (lots 1 thru 147) Block 36, (lots 1 thru 19) Block 37, (lots 1 thru 19) Block 38, (lots 1 thru 40) Block 39, (lots 1 thru 27) Block 40, (lots 1 thru 40) Block 41, (lots 1 thru 28) Block 42, (lots 1 thru 78) Block 44, (lots 1 thru 45) Block 45, (lots 1 thru 15) Block 46, (lots 1 thru 89) Tracts "BB" & "CC" Tract "C"	March 12, 1970
25	BLOCKS 47 THRU 66, PORTIONS OF BLOCK 44 & 46, TRACT "D", UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 24, Block 44, (lots 46 thru 78) Block 46, (lots 90 thru 98) Block 47, (lots 1 thru 48) Block 48, (lots 1 thru 18) Block 49, (lots 1 thru 17) Block 50, (lots 1 thru 20) Block 51, (lots 1 thru 72) Block 52, (lots 1 thru 37) Block 53, (lots 1 thru 50) Block 54, (lots 1 thru 36) Block 55, (lots 1 thru 53) Block 56, (lots 1 thru 47) Block 57, (lots 1 thru 48) Block 58, (lots 1 thru 38) Block 59, (lots 1 thru 40) Block 60, (lots 1 thru 16) Block 61, (lots 1 thru 17) Block 62, (lots 1 thru 5) Block 63, (lots 1 thru 11) Block 64, (lots 1 thru 46) Block 65, (lots 1 thru 12) Block 66, (lots 1 thru 8) Tract "D"	March 12, 1970
26	REPLAT, PORTIONS OF UNITS 21, 22 & 23, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 21, Block 44, (lot 31A) Block 48, (lots 1A & 48A) Block 62, (lot 2A) Unit 22, Block 95, (lots 32A & 33A) Unit 23, Block 112, (lots 28A & 29A) Tract "H"	March 12, 1970
27	BLOCKS 67 THRU 90, PORTIONS OF BLOCKS 59 AND 60, UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 24, Block 59, (lots 41 thru 50) Block 60, (lots 17 thru 48) Block 67, (lots 1 thru 34) Block 68, (lots 1 thru 65) Block 69, (lots 1 thru 23) Block 70, (lots 1 thru 27) Block 71, (lots 1 thru 71) Block 72, (lots 1 thru 70) Block 73, (lots 1 thru 64) Block 74, (lots 1 thru 28) Block 75, (lots 1 thru 6) Block 76, (lots 1 thru 7) Block 77, (lots 1 thru 14) Block 78, (lots 1 thru 13) Block 79, (lots 1 thru 27) Block 80, (lots 1 thru 22)	April 16, 1970

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PLAT BOOK No. 2

PAGE No.	DESCRIPTION	FILING DATE
27	Block 81, (lots 1 thru 24)	
	Block 82, (lots 1 thru 25)	
	Block 83, (lots 1 thru 36)	
	Block 84, (lots 1 thru 58)	
	Block 85, (lots 1 thru 18)	
	Block 86, (lots 1 thru 18)	
	Block 87, (lots 1 thru 18)	
	Block 88, (lots 1 thru 16)	
	Block 89, (lots 1 thru 17)	
	Block 90, (lots 1 thru 67)	
28	BLOCKS 91 THRU 118 AND PORTIONS OF BLOCKS 88 AND 89, UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	April 16, 1970
	Unit 24, Block 88, (lots 17 thru 22)	
	Block 89, (lots 18 thru 79)	
	Block 91, (lots 1 thru 28)	
	Block 92, (lots 1 thru 37)	
	Block 93, (lots 1 thru 28)	
	Block 94, (lots 1 thru 23)	
	Block 95, (lots 1 thru 38)	
	Block 96, (lots 1 thru 67)	
	Block 97, (lots 1 thru 31)	
	Block 98, (lots 1 thru 58)	
	Block 99, (lots 1 thru 53)	
	Block 100, (lots 1 thru 49)	
	Block 101, (lots 1 thru 39)	
	Block 102, (lots 1 thru 72)	
	Block 103, (lots 1 thru 33)	
	Block 104, (lots 1 thru 34)	
	Block 105, (lots 1 thru 34)	
	Block 106, (lots 1 thru 34)	
	Block 107, (lots 1 thru 39)	
	Block 108, (lots 1 thru 83)	
	Block 109, (lots 1 thru 70)	
	Block 110, (lots 1 thru 27)	
	Block 111, (lots 1 thru 10)	
	Block 112, (lots 1 thru 24)	
	Block 113, (lots 1 thru 49)	
	Block 114, (lots 1 thru 60)	
	Block 115, (lots 1 thru 73)	
	Block 116, (lots 1 thru 34)	
	Block 117, (lots 1 thru 19)	
	Block 118, (lots 1 thru 21)	
29	BLOCKS 119 THRU 141, MULTIPLE TRACT "DD", UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	April 16, 1970
	Unit 24, Block 119, (lots 1 thru 137)	
	Block 120, (lots 1 thru 16)	
	Block 121, (lots 1 thru 7)	
	Block 122, (lots 1 thru 8)	
	Block 123, (lots 1 thru 27)	
	Block 124, (lots 1 thru 26)	
	Block 125, lots 1 thru 13)	
	Block 126, (lots 1 thru 22)	
	Block 127, (lots 1 thru 17)	
	Block 128, (lots 1 thru 41)	
	Block 129, (lots 1 thru 88)	
	Block 130, (lots 1 thru 78)	
	Block 131, (lots 1 thru 15)	
	Block 132, (lots 1 thru 25)	
	Block 133, (lots 1 thru 26)	
	Block 134, (lots 1 thru 28)	
	Block 135, (lots 1 thru 54)	
	Block 136, (lots 1 thru 22)	
	Block 137, (lots 1 thru 28)	
	Block 138, (lots 1 thru 59)	
	Block 139, (lots 1 thru 38)	
	Block 140, (lots 1 thru 35)	
	Block 141, (lots 1 thru 25)	
	Tract "DD"	
30	REPLAT, PORTIONS OF UNITS 16 (COMMERCIAL TRACT "F"), 23 AND 24 AND VACATION, UNIT 16, (PORTION OF A 20' ALLEY), RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	April 16, 1970
	Unit 23, Block 80, (lot 30A)	
	Block 113, (lots 8A & 9A)	
	Unit 24, Block 2, (lot 4A)	
	Block 3, (lots 12A, 13A, 22A & 23A)	
	Block 7, (lots 3A & 4A)	
	Block 14, (lot 1A)	
	Block 15, (lot 2A)	
31	PORTION OF BLOCKS 63 & 67, BLOCKS 73 THRU 97, MULTIPLE TRACT "JJ", UNIT TWENTY-ONE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	April 16, 1970
	Unit 21, Block 63, (lots 11 thru 165)	
	Block 67, (lots 26 thru 50)	
	Block 73, (lots 1 thru 36)	
	Block 74, (lots 1 thru 36)	

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PAGE No.	DESCRIPTION	FILING DATE
31	Block 75, (lots 1 thru 20)	
	Block 76, (lots 1 thru 20)	
	Block 77, (lots 1 thru 20)	
	Block 78, (lots 1 thru 20)	
	Block 79, (lots 1 thru 20)	
	Block 80, (lots 1 thru 10)	
	Block 81, (lots 1 thru 30)	
	Block 82, (lots 1 thru 58)	
	Block 83, (lots 1 thru 30)	
	Block 84, (lots 1 thru 36)	
	Block 85, (lots 1 thru 48)	
	Block 86, (lots 1 thru 34)	
	Block 87, (lots 1 thru 36)	
	Block 88, (lots 1 thru 30)	
	Block 89, (lots 1 thru 34)	
	Block 90, (lots 1 thru 29)	
	Block 91, (lots 1 thru 29)	
	Block 92, (lots 1 thru 34)	
	Block 93, (lots 1 thru 68)	
	Block 94, (lots 1 thru 8)	
	Block 95, (lots 1 thru 18)	
	Block 96, (lots 1 thru 18)	
	Block 97, (lots 1 thru 12)	
	Tract "JJ"	
32	BLOCKS 1 THRU 41, MULTIPLE TRACTS "AA" & "BB", COMMERCIAL TRACTS "A", "B" & "C", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	April 16, 1970
	Unit 20, Block 1, (lots 1 thru 17)	
	Block 2, (lots 1 thru 16)	
	Block 3, (lots 1 thru 15)	
	Block 4, (lots 1 thru 13)	
	Block 5, (lots 1 thru 12)	
	Block 6, (lots 1 thru 11)	
	Block 7, (lots 1 thru 10)	
	Block 8, (lots 1 thru 9)	
	Block 9, (lots 1 thru 8)	
	Block 10, (lots 1 thru 11)	
	Block 11, (lots 1 thru 29)	
	Block 12, (lots 1 thru 29)	
	Block 13, (lots 1 thru 23)	
	Block 14, (lots 1 thru 29)	
	Block 15, (lots 1 thru 32)	
	Block 16, (lots 1 thru 10)	
	Block 17, (lots 1 thru 31)	
	Block 18, (lots 1 thru 44)	
	Block 19, (lots 1 thru 35)	
	Block 20, (lots 1 thru 26)	
	Block 21, (lots 1 thru 60)	
	Block 22, (lots 1 thru 14)	
	Block 23, (lots 1 thru 61)	
	Block 24, (lots 1 thru 44)	
	Block 25, (lots 1 thru 50)	
	Block 26, (lots 1 thru 48)	
	Block 27, (lots 1 thru 48)	
	Block 28, (lots 1 thru 38)	
	Block 29, (lots 1 thru 23)	
	Block 30, (lots 1 thru 47)	
	Block 31, (lots 1 thru 42)	
	Block 32, (lots 1 thru 23)	
	Block 33, (lots 1 thru 15)	
	Block 34, (lots 1 thru 21)	
	Block 35, (lots 1 thru 19)	
	Block 36, (lots 1 thru 17)	
	Block 37, (lots 1 thru 27)	
	Block 38, (lots 1 thru 15)	
	Block 39, (lots 1 thru 17)	
	Block 40, (lots 1 thru 20)	
	Block 41, (lots 1 thru 23)	
	Tracts AA, BB, A, B & C	
33	BLOCKS 42 THRU 65, MULTIPLE TRACTS "CC" & "DD", TRACT "D", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	May 25, 1970
	Unit 20, Block 42, (lots 1 thru 23)	
	Block 43, (lots 1 thru 28)	
	Block 44, (lots 1 thru 40)	
	Block 45, (lots 1 thru 26)	
	Block 46, (lots 1 thru 19)	
	Block 47, (lots 1 thru 25)	
	Block 48, (lots 1 thru 43)	
	Block 49, (lots 1 thru 25)	
	Block 50, (lots 1 thru 40)	
	Block 51, (lots 1 thru 50)	
	Block 52, (lots 1 thru 61)	
	Block 53, (lots 1 thru 39)	
	Block 54, (lots 1 thru 50)	
	Block 55, (lots 1 thru 49)	
	Block 56, (lots 1 thru 44)	
	Block 57, (lots 1 thru 32)	
	Block 58, (lots 1 thru 36)	

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PAGE No.	DESCRIPTION	FILING DATE
33	Block 59, (lots 1 thru 28) Block 60, (lots 1 thru 72) Block 61, (lots 1 thru 44) Block 62, (lots 1 thru 45) Block 63, (lots 1 thru 44) Block 64, (lots 1 thru 44) Block 65, (lots 1 thru 44) Tracts CC, DD & D	
34	BLOCKS 1 THRU 28, COMMERCIAL BLOCKS "A", "B" & "C", UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 25, Block 1, (lots 1 thru 30) Block 2, (lots 1 thru 30) Block 3, (lots 1 thru 30) Block 4, (lots 1 thru 43) Block 5, (lots 1 thru 52) Block 6, (lots 1 thru 52) Block 7, (lots 1 thru 52) Block 8, (lots 1 thru 52) Block 9, (lots 1 thru 52) Block 10, (lots 1 thru 47) Block 11, (lots 1 thru 41) Block 12, (lots 1 thru 45) Block 13, (lots 1 thru 45) Block 14, (lots 1 thru 28) Block 15, (lots 1 thru 28) Block 16, (lots 1 thru 30) Block 17, (lots 1 thru 14) Block 18, (lots 1 thru 43) Block 19, (lots 1 thru 44) Block 20, (lots 1 thru 44) Block 21, (lots 1 thru 45) Block 22, (lots 1 thru 49) Block 23, (lots 1 thru 44) Block 24, (lots 1 thru 43) Block 25, (lots 1 thru 13) Block 26, (lots 1 thru 39) Block 27, (lots 1 thru 39) Block 28, (lots 1 thru 37) Block A, (lots 1 thru 64) Block B, (lots 1 thru 35) Block C, (lots 1 thru 71)	May 25, 1970
35	BLOCKS 98 THRU 121 AND PORTIONS OF BLOCKS 94 THRU 97, UNIT TWENTY-ONE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 21, Block 94, (lots 19 thru 37) Block 95, (lots 19 thru 26) Block 96, (lots 19 thru 42) Block 97, (lots 13 thru 48) Block 98, (lots 1 thru 23) Block 99, (lots 1 thru 36) Block 100, (lots 1 thru 68) Block 101, (lots 1 thru 68) Block 102, (lots 1 thru 19) Block 103, (lots 1 thru 48) Block 104, (lots 1 thru 50) Block 105, (lots 1 thru 12) Block 106, (lots 1 thru 50) Block 107, (lots 1 thru 50) Block 108, (lots 1 thru 21) Block 109, (lots 1 thru 49) Block 110, (lots 1 thru 45) Block 111, (lots 1 thru 25) Block 112, (lots 1 thru 32) Block 113, (lots 1 thru 40) Block 114, (lots 1 thru 25) Block 115, (lots 1 thru 14) Block 115, (lots 1 thru 23) Block 117, (lots 1 thru 24) Block 118, (lots 1 thru 33) Block 119, (lots 1 thru 31) Block 120, (lots 1 thru 28) Block 121, (lots 1 thru 17)	May 25, 1970
36	REPLAT, A PORTION OF PANORAMA HEIGHTS AND PORTIONS OF UNITS 10, 23, 24 & 26, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 10, Block 25, (lot 29A) Block 29, (lots 5A, 6A & 7A) Unit 23, Block 106, (lots 43A thru 72A) Unit 24, Block 32, (lots 20A & 22A) Block 41, (lot 17A) Block 44, (lot 32A) Block 59, (lots 1A, 2A, 3A & 4A) Block 60, (lots 12A, 14A & 15A) Unit 26, Block 47, (lot 2A) Unit Panorama Heights Block 7, (lots 24A thru 38A)	June 10, 1970
37	BLOCKS 66 THRU 92, COMMERCIAL TRACT "E", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 66, (lots 1 thru 23) Block 67, (lots 1 thru 7) Block 68, (lots 1 thru 14) Block 69, (lots 1 thru 6) Block 70, (lots 1 thru 8) Block 71, (lots 1 thru 12) Block 72, (lots 1 and 2) Block 73, (lots 1 thru 9) Block 74, (lots 1 thru 6) Block 75, (lots 1 thru 8) Block 76, (lots 1 thru 43) Block 77, (lots 1 thru 16) Block 78, (lots 1 thru 12) Block 79, (lots 1 thru 19) Block 80, (lots 1 thru 18) Block 81, (lots 1 thru 24) Block 82, (lots 1 thru 46) Block 83, (lots 1 thru 22) Block 84, (lots 1 thru 12) Block 85, (lots 1 thru 13) Block 86, (lots 1 thru 36) Block 87, (lots 1 thru 58) Block 88, (lots 1 thru 37) Block 89, (lots 1 thru 58) Block 90, (lots 1 thru 25) Block 91, (lots 1 thru 39) Block 92, (lots 1 thru 17) Tract "E"	June 10, 197
38	REPLAT PORTIONS OF UNITS 4, 17, 20 & 24, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 4, Block 41, (lots 3A & 3B) Unit 17, Block "O", (lots 9A thru 15A) Unit 20, Block 42, (lots 20A thru 23A) Block 44, (lots 16A and 22A) Block 45, (lots 1A, 13A, 14A & 26A) Block 46, (lots 1A and 19A) Block 47, (lots 1A, 13A & 25A) Block 51, (lots 24A thru 33A) Block 52, (lots 15A thru 18A, & 20A) Block 53, (lot 1A) Unit 24, Block 51, (lots 11A and 35A) Tract "DD"	Sept. 17, 1970
39	REPLAT PORTIONS OF UNITS 20, 21, 22, 24 & 26, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 48, (lot 32B) Unit 21, Block 51, (lots 1A, 2A & 3A) Unit 22, Block 29, (lots 24B thru 36B) Block 36, (lots 1B thru 39B) Unit 24, Block 35, (lots 94A and 95A) Block 45, (lots 2A thru 6A) Block 46, (lot 5A) Unit 26, Block 70, (lot 1A) Block 102, (lots 19A and 26A) Block 104, (lots 1A, 2A, 3A & 3B)	April 12, 197
40	BLOCKS 93 THRU 103, UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 93, (lots 1 thru 41) Block 94, (lots 1 thru 29) Block 95, (lots 1 thru 36) Block 96, (lots 1 thru 48) Block 97, (lots 1 thru 62) Block 98, (lots 1 thru 32) Block 99, (lots 1 thru 58) Block 100, (lots 1 thru 42) Block 101, (lots 1 thru 51) Block 102, (lots 1 thru 60) Block 103, (lots 1 thru 59)	May 3, 197
41	BLOCKS 74 THRU 90, AND A PORTION OF BLOCK 73, MULTIPLE TRACTS "EE", "FF" & "GG", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 26, Block 73, (lots 112 thru 125) Block 74, (lots 1 thru 13) Block 75, (lots 1 thru 50) Block 76, (lots 1 thru 31) Block 77, (lots 1 thru 28) Block 78, (lots 1 thru 30) Block 79, (lots 1 thru 25) Block 80, (lots 1 thru 13) Block 81, (lots 1 thru 30) Block 82, (lots 1 thru 73) Block 83, (lots 1 thru 22) Block 84, (lots 1 thru 14)	Feb. 1, 197

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PAGE No.	DESCRIPTION	FILING DATE
41	Block 85, (lots 1 thru 52)	
	Block 86, (lots 1 thru 50)	
	Block 87, (lots 1 thru 40)	
	Block 88, (lots 1 thru 17)	
	Block 89, (lots 1 thru 46)	
	Block 90, (lots 1 thru 18)	
	Tracts EE, FF & GG	
42	REPLAT, A PORTION OF PANORAMA HEIGHTS AND PORTIONS OF UNITS 5, 17, 20, 21 & 25, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Jan. 15, 1971
	Unit 5, Block 16, (6.11 Acres)	
	Unit 17, Block 154, (lots 1A thru 4A)	
	Block 167, (lots 1A, 1B & 1C)	
	Unit 20, Block 60, (lots 1A, 22A, 24A, 37A & 39A)	
	Block 84, (lot 10A)	
	Unit 21, Block 63, (lots 112A, 112B, 113A, 144A, 145A, 159A & 160A)	
	Unit 25, Block 27, (lot 3A)	
43	BLOCKS 91 THRU 111, UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb. 1, 1971
	Unit 26, Block 91, (lots 1 thru 95)	
	Block 92, (lots 1 thru 82)	
	Block 93, (lots 1 thru 29)	
	Block 94, (lots 1 thru 24)	
	Block 95, (lots 1 thru 17)	
	Block 96, (lots 1 thru 23)	
	Block 97, (lots 1 thru 30)	
	Block 98, (lots 1 thru 44)	
	Block 99, (lots 1 thru 20)	
	Block 100, (lots 1 thru 30)	
	Block 101, (lots 1 thru 31)	
	Block 102, (lots 1 thru 45)	
	Block 103, (lots 1 thru 42)	
	Block 104, (lots 1 thru 28)	
	Block 105, (lots 1 thru 20)	
	Block 106, (lots 1 thru 20)	
	Block 107, (lots 1 thru 18)	
	Block 108, (lots 1 thru 68)	
	Block 109, (lots 1 thru 47)	
	Block 110, (lots 1 thru 40)	
	Block 111, (lots 1 thru 14)	
44	BLOCKS 112 THRU 128, MULTIPLE TRACT "HH", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb. 1, 1971
	Unit 26, Block 112, (lots 1 thru 60)	
	Block 113, (lots 1 thru 42)	
	Block 114, (lots 1 thru 22)	
	Block 115, (lots 1 thru 42)	
	Block 116, (lots 1 thru 29)	
	Block 117, (lots 1 thru 24)	
	Block 118, (lots 1 thru 24)	
	Block 119, (lots 1 thru 117)	
	Block 120, (lots 1 thru 40)	
	Block 121, (lots 1 thru 57)	
	Block 122, (lots 1 thru 15)	
	Block 123, (lots 1 thru 68)	
	Block 124, (lots 1 thru 26)	
	Block 125, (lots 1 thru 28)	
	Block 126, (lots 1 thru 30)	
	Block 127, (lots 1 thru 10)	
	Block 128, (lots 1 thru 65)	
	Tract HH	
45	A PORTION OF BLOCKS 73, 78 & 81, BLOCKS 129 THRU 141, TRACT "I", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb. 8, 1971
	Unit 26, Block 73, (lots 126 thru 190)	
	Block 78, (lots 31 thru 192)	
	Block 81, (lots 31 thru 34)	
	Block 129, (lots 1 thru 181)	
	Block 130, (lots 1 thru 22)	
	Block 131, (lots 1 thru 135)	
	Block 132, (lots 1 thru 55)	
	Block 133, (lots 1 thru 54)	
	Block 134, (lots 1 thru 67)	
	Block 135, (lots 1 thru 79)	
	Block 136, (lots 1 thru 41)	
	Block 137, (lots 1 thru 95)	
	Block 138, (lots 1 thru 63)	
	Block 139, (lots 1 thru 34)	
	Block 140, (lots 1 thru 65)	
	Block 141, (lots 1 thru 16)	
	Tract "I"	
46	BLOCKS 142 THRU 164, TRACTS "G" AND "H", UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb. 8, 1971
	Unit 26, Block 142, (lots 1 thru 82)	
	Block 143, (lots 1 thru 120)	
	Block 144, (lots 1 thru 58)	
46	Block 145, (lots 1 thru 42)	
	Block 146, (lots 1 thru 38)	
	Block 147, (lots 1 thru 27)	
	Block 148, (lots 1 thru 16)	
	Block 149, (lots 1 thru 56)	
	Block 150, (lots 1 thru 28)	
	Block 151, (lots 1 thru 83)	
	Block 152, (lots 1 thru 23)	
	Block 153, (lots 1 thru 14)	
	Block 154, (lots 1 thru 17)	
	Block 155, (lots 1 thru 29)	
	Block 156, (lots 1 thru 39)	
	Block 157, (lots 1 thru 52)	
	Block 158, (lots 1 thru 50)	
	Block 159, (lots 1 thru 51)	
	Block 160, (lots 1 thru 72)	
	Block 161, (lots 1 thru 60)	
	Block 162, (lots 1 thru 35)	
	Block 163, (lots 1 thru 55)	
	Block 164, (lots 1 thru 7)	
	Tracts G & H	
47	A PORTION OF BLOCKS 50 AND 52, BLOCKS 165 THRU 183, UNIT TWENTY-SIX, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb 8, 1971
	Unit 26, Block 50, (lots 17 thru 25)	
	Block 52, (lots 56 thru 77)	
	Block 165, (lots 1 thru 71)	
	Block 166, (lots 1 thru 40)	
	Block 167, (lots 1 thru 20)	
	Block 168, (lots 1 thru 52)	
	Block 169, (lots 1 thru 52)	
	Block 170, (lots 1 thru 15)	
	Block 171, (lots 1 thru 26)	
	Block 172, (lots 1 thru 5)	
	Block 173, (lots 1 thru 27)	
	Block 174, (lots 1 thru 11)	
	Block 175, (lots 1 thru 62)	
	Block 176, (lots 1 thru 14)	
	Block 177, (lots 1 thru 33)	
	Block 178, (lots 1 thru 10)	
	Block 179, (lots 1 thru 5)	
	Block 180, (lots 1 thru 73)	
	Block 181, (lots 1 thru 25)	
	Block 182, (lots 1 thru 15)	
	Block 183, (lots 1 thru 55)	
48	BLOCKS 29 THRU 47, MULTIPLE TRACT "AA", UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb. 16, 1971
	Unit 25, Block 29, (lots 1 thru 70)	
	Block 30, (lots 1 thru 60)	
	Block 31, (lots 1 thru 47)	
	Block 32, (lots 1 thru 26)	
	Block 33, (lots 1 thru 10)	
	Block 34, (lots 1 thru 38)	
	Block 35, (lots 1 thru 17)	
	Block 36, (lots 1 thru 7)	
	Block 37, (lots 1 thru 7)	
	Block 38, (lots 1 thru 9)	
	Block 39, (lots 1 thru 38)	
	Block 40, (lots 1 thru 19)	
	Block 41, (lots 1 thru 33)	
	Block 42, (lots 1 thru 33)	
	Block 43, (lots 1 thru 24)	
	Block 44, (lots 1 thru 63)	
	Block 45, (lots 1 thru 46)	
	Block 46, (lots 1 thru 43)	
	Block 47, (lots 1 thru 29)	
	Tract AA	
49	BLOCKS 48 THRU 64, COMMERCIAL TRACT "D", MULTIPLE TRACT "BB", UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Feb. 8, 1971
	Unit 25, Block 48, (lots 1 thru 92)	
	Block 49, (lots 1 thru 64)	
	Block 50, (lots 1 thru 49)	
	Block 51, (lots 1 thru 63)	
	Block 52, (lots 1 thru 47)	
	Block 53, (lots 1 thru 42)	
	Block 54, (lots 1 thru 42)	
	Block 55, (lots 1 thru 40)	
	Block 56, (lots 1 thru 30)	
	Block 57, (lots 1 thru 37)	
	Block 58, (lots 1 thru 21)	
	Block 59, (lots 1 thru 20)	
	Block 60, (lots 1 thru 37)	
	Block 61, (lots 1 thru 32)	
	Block 62, (lots 1 thru 19)	
	Block 63, (lots 1 thru 24)	
	Block 64, (lots 1 thru 47)	
	Tracts D and BB	

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PLAT BOOK No. 2

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PAGE No.	DESCRIPTION	FILING DATE
50	BLOCKS 65 THRU 81, UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 25, Block 65, (lots 1 thru 24) Block 66, (lots 1 thru 38) Block 67, (lots 1 thru 32) Block 68, (lots 1 thru 35) Block 69, (lots 1 thru 49) Block 70, (lots 1 thru 22) Block 71, (lots 1 thru 15) Block 72, (lots 1 thru 55) Block 73, (lots 1 thru 22) Block 74, (lots 1 thru 40) Block 75, (lots 1 thru 29) Block 76, (lots 1 thru 59) Block 77, (lots 1 thru 60) Block 78, (lots 1 thru 31) Block 79, (lots 1 thru 28) Block 80, (lots 1 thru 42) Block 81, (lots 1 thru 39)	Feb. 8, 1971
51	BLOCKS 82 THRU 109, UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 25, Block 82, (lots 1 thru 17) Block 83, (lots 1 thru 42) Block 84, (lots 1 thru 42) Block 85, (lots 1 thru 42) Block 86, (lots 1 thru 54) Block 87, (lots 1 thru 28) Block 88, (lots 1 thru 28) Block 89, (lots 1 thru 28) Block 90, (lots 1 thru 53) Block 91, (lots 1 thru 20) Block 92, (lots 1 thru 33) Block 93, (lots 1 thru 39) Block 94, (lots 1 thru 28) Block 95, (lots 1 thru 20) Block 96, (lots 1 thru 10) Block 97, (lots 1 thru 7) Block 98, (lots 1 thru 17) Block 99, (lots 1 thru 18) Block 100, (lots 1 thru 14) Block 101, (lots 1 thru 41) Block 102, (lots 1 thru 10) Block 103, (lots 1 thru 5) Block 104, (lots 1 thru 56) Block 105, (lots 1 thru 43) Block 106, (lots 1 thru 26) Block 107, (lots 1 thru 35) Block 108, (lots 1 thru 30) Block 109, (lots 1 thru 21)	Feb. 16, 1971
52	BLOCKS 110 THRU 130, A PORTION OF BLOCK 57, COMMERCIAL TRACT "E", MULTIPLE TRACT "CC", UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 25, Block 57, (lots 38 thru 54) Block 110, (lots 1 thru 58) Block 111, (lots 1 thru 14) Block 112, (lots 1 thru 9) Block 113, (lots 1 thru 19) Block 114, (lots 1 thru 15) Block 115, (lots 1 thru 24) Block 116, (lots 1 thru 11) Block 117, (lots 1 thru 16) Block 118, (lots 1 thru 34) Block 119, (lots 1 thru 40) Block 120, (lots 1 thru 32) Block 121, (lots 1 thru 94) Block 122, (lots 1 thru 33) Block 123, (lots 1 thru 20) Block 124, (lots 1 thru 26) Block 125, (lots 1 thru 30) Block 126, (lots 1 thru 9) Block 127, (lots 1 thru 24) Block 128, (lots 1 thru 5) Block 129, (lots 1 thru 40) Block 130, (lots 1 thru 25) Tracts E & CC	March 5, 1971
53	BLOCKS 131 THRU 141 & 143 THRU 150, PORTIONS OF BLOCKS 25, 26, 27 & 142, UNIT TWENTY FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 25, Block 25, (lots 14 thru 25) Block 26, (lots 40 thru 67) Block 27, (lots 40 thru 63) Block 131, (lots 1 thru 18) Block 132, (lots 1 thru 21) Block 133, (lots 1 thru 22) Block 134, (lots 1 thru 21) Block 135, (lots 1 thru 32) Block 136, (lots 1 thru 28) Block 137, (lots 1 thru 25)	March 5, 1971

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RIO RANCHO ESTATES
PLAT BOOK No. 2

PAGE No.	DESCRIPTION	FILING
53	Block 138, (lots 1 thru 61) Block 139, (lots 1 thru 12) Block 140, (lots 1 thru 49) Block 141, (lots 1 thru 25) Block 142, (lots 27 thru 118) Block 143, (lots 1 thru 24) Block 144, (lots 1 thru 23) Block 145, (lots 1 thru 36) Block 146, (lots 1 thru 28) Block 147, (lots 1 thru 38) Block 148, (lots 1 thru 40) Block 149, (lots 1 thru 65) Block 150, (lots 1 thru 30)	
54	BLOCKS 151 THRU 160, A PORTION OF BLOCK 142, UNIT TWENTY-FIVE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 25, Block 142, (lots 1 thru 26, and 119 thru 154) Block 151, (lots 1 thru 27) Block 152, (lots 1 thru 28) Block 153, (lots 1 thru 16) Block 154, (lots 1 thru 65) Block 155, (lots 1 thru 47) Block 156, (lots 1 thru 4) Block 157, (lots 1 thru 30) Block 158, (lots 1 thru 25) Block 159, (lots 1 thru 8) Block 160, (lots 1 thru 111)	March 5
55	BLOCKS 142 THRU 184, AND PORTION OF BLOCK 67, UNIT TWENTY-FOUR, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 24, Block 67, (lots 35 thru 60) Block 142, (lots 1 thru 54) Block 143, (lots 1 thru 14) Block 144, (lots 1 thru 11) Block 145, (lots 1 thru 3) Block 146, (lots 1 thru 12) Block 147, (lots 1 thru 10) Block 148, (lots 1 thru 13) Block 149, (lots 1 thru 16) Block 150, (lots 1 thru 11) Block 151, (lots 1 thru 18) Block 152, (lots 1 thru 18) Block 153, (lots 1 thru 20) Block 154, (lots 1 thru 16) Block 155, (lots 1 thru 13) Block 156, (lots 1 thru 28) Block 157, (lots 1 thru 19) Block 158, (lots 1 thru 12) Block 159, (lots 1 thru 12) Block 160, (lots 1 thru 11) Block 161, (lots 1 thru 12) Block 162, (lots 1 thru 11) Block 163, (lots 1 thru 10) Block 164, (lots 1 thru 43) Block 165, (lots 1 thru 3) Block 166, (lots 1 thru 26) Block 167, (lots 1 thru 4) Block 168, (lots 1 thru 12) Block 169, (lots 1 thru 13) Block 170, (lots 1 thru 14) Block 171, (lots 1 thru 14) Block 172, (lots 1 thru 27) Block 173, (lots 1 thru 27) Block 174, (lots 1 thru 6) Block 175, (lots 1 thru 9) Block 176, (lots 1 thru 14) Block 177, (lots 1 thru 6) Block 178, (lots 1 thru 18) Block 179, (lots 1 thru 18) Block 180, (lots 1 thru 8) Block 181, (lots 1 thru 13) Block 182, (lots 1 thru 18) Block 183, (lots 1 thru 12) Block 184, (lots 1 thru 31)	May 3
56	BLOCKS 154 THRU 165, UNIT TWENTY-THREE, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 23, Block 154, (lots 1 thru 13) Block 155, (lots 1 thru 34) Block 156, (lots 1 thru 13) Block 157, (lots 1 thru 26) Block 158, (lots 1 thru 19) Block 159, (lots 1 thru 20) Block 160, (lots 1 thru 24) Block 161, (lots 1 thru 21) Block 162, (lots 1 thru 30) Block 163, (lots 1 thru 43) Block 164, (lots 1 thru 36) Block 165, (lots 1 thru 46)	May 3, 1

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RIO RANCHO ESTATES
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PAGE No.	DESCRIPTION	FILING DATE
57	BLOCKS 117 THRU 156, AND PORTIONS OF BLOCKS 8 & 9, UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, MEW MEXICO Unit 22, Block 8, (lots 29 thru 31) Block 9, (lots 1 thru 2) Block 117, (lots 1 thru 18) Block 118, (lots 1 thru 18) Block 119, (lots 1 thru 10) Block 120, (lots 1 thru 27) Block 121, (lots 1 thru 28) Block 122, (lots 1 thru 8) Block 123, (lots 1 thru 21) Block 124, (lots 1 thru 22) Block 125, (lots 1 thru 24) Block 126, (lots 1 thru 23) Block 127, (lots 1 thru 31) Block 128, (lots 1 thru 9) Block 129, (lots 1 thru 18) Block 130, (lots 1 thru 11) Block 131, (lots 1 thru 11) Block 132, (lots 1 thru 19) Block 133, (lots 1 thru 15) Block 134, (lots 1 thru 12) Block 135, (lots 1 thru 10) Block 136, (lots 1 thru 28) Block 137, (lots 1 thru 27) Block 138, (lots 1 thru 45) Block 139, (lots 1 thru 7) Block 140, (lots 1 thru 21) Block 141, (lots 1 thru 20) Block 142, (lots 1 thru 15) Block 143, (lots 1 thru 12) Block 144, (lots 1 thru 33) Block 145, (lots 1 thru 9) Block 146, (lots 1 thru 28) Block 147, (lots 1 thru 9) Block 148, (lots 1 thru 17) Block 149, (lots 1 thru 14) Block 150, (lots 1 thru 15) Block 151, (lots 1 thru 28) Block 152, (lots 1 thru 13) Block 153, (lots 1 thru 24) Block 154, (lots 1 thru 26) Block 155, (lots 1 thru 27) Block 156, (lots 1 thru 15)	May 3, 1972
58	BLOCKS 104 THRU 118, AND TRACT "F", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 104, (lots 1 thru 52) Block 105, (lots 1 thru 24) Block 106, (lots 1 thru 21) Block 107, (lots 1 thru 100) Block 108, (lots 1 thru 58) Block 109, (lots 1 thru 29) Block 110, (lots 1 thru 29) Block 111, (lots 1 thru 58) Block 112, (lots 1 thru 9) Block 113, (lots 1 thru 37) Block 114, (lots 1 thru 38) Block 115, (lots 1 thru 11) Block 116, (lots 1 thru 40) Block 117, (lots 1 thru 40) Block 118, (lots 1 thru 20) Tract F	May 3, 1972
59	BLOCKS 119 THRU 134, PORTIONS OF BLOCKS 88 AND 89, RESERVED TRACTS "H" & "I", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 88, (lots 38 thru 54) Block 89, (lots 59 thru 76) Block 119, (lots 1 thru 18) Block 120, (lots 1 thru 19) Block 121, (lots 1 thru 20) Block 122, (lots 1 thru 18) Block 123, (lots 1 thru 52) Block 124, (lots 1 thru 24) Block 125, (lots 1 thru 33) Block 126, (lots 1 thru 54) Block 127, (lots 1 thru 27) Block 128, (lots 1 thru 22) Block 129, (lots 1 thru 24) Block 130, (lots 1 thru 30) Block 131, (lots 1 thru 40) Block 132, (lots 1 thru 31) Block 133, (lots 1 thru 90) Block 134, (lots 1 thru 16) Tracts H & I	June 19, 1972
60	BLOCKS 135 THRU 153, COMMERCIAL TRACT "J", MULTIPLE TRACT "EE", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 135, (lots 1 thru 19) Block 136, (lots 1 thru 24) Block 137, (lots 1 thru 40) Block 138, (lots 1 thru 26) Block 139, (lots 1 thru 28) Block 140, (lots 1 thru 18) Block 141, (lots 1 thru 11) Block 142, (lots 1 thru 35) Block 143, (lots 1 thru 38) Block 144, (lots 1 thru 25) Block 145, (lots 1 thru 19) Block 146, (lots 1 thru 57) Block 147, (lots 1 thru 13) Block 148, (lots 1 thru 50) Block 149, (lots 1 thru 25) Block 150, (lots 1 thru 20) Block 151, (lots 1 thru 14) Block 152, (lots 1 thru 25) Block 153, (lots 1 thru 32) Tracts J and EE	June 19, 1972
61	BLOCKS 154 THRU 167 AND PORTION OF BLOCK 168, UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 154, (lots 1 thru 38) Block 155, (lots 1 thru 82) Block 156, (lots 1 thru 8) Block 157, (lots 1 thru 27) Block 158, (lots 1 thru 37) Block 159, (lots 1 thru 41) Block 160, (lots 1 thru 42) Block 161, (lots 1 thru 31) Block 162, (lots 1 thru 17) Block 163, (lots 1 thru 6) Block 164, (lots 1 thru 10 Block 165, (lots 1 thru 22) Block 166, (lots 1 thru 32) Block 167, (lots 1 thru 35) Block 168, (lots 1 thru 64)	June 19, 1972
62	BLOCKS 169 THRU 180, PORTIONS OF BLOCKS 168 AND 181, COMMERCIAL TRACTS "K" & "L", MULTIPLE TRACTS "FF" & "GG", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 168, (lots 65 thru 77) Block 169, (lots 1 thru 14) Block 170, (lots 1 thru 8) Block 171, (lots 1 thru 38) Block 172, (lots 1 thru 27) Block 173, (lots 1 thru 41) Block 174, (lots 1 thru 13) Block 175, (lots 1 thru 10) Block 176, (lots 1 thru 18) Block 177, (lots 1 thru 93) Block 178, (lots 1 thru 30) Block 179, (lots 1 thru 46) Block 180, (lots 1 thru 35) Block 181, (lots 93 thru 111) Tracts K & L Tracts FF & GG	June 19, 1972
63	BLOCKS 182 THRU 191, PORTION OF BLOCK 181, MULTIPLE TRACT "HH", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 181, (lots 1 thru 92) Block 182, (lots 1 thru 8) Block 183, (lots 1 thru 28) Block 184, (lots 1 thru 16) Block 185, (lots 1 thru 58) Block 186, (lots 1 thru 20) Block 187, (lots 1 thru 33) Block 188, (lots 1 thru 24) Block 189, (lots 1 thru 27) Block 190, (lots 1 thru 36) Block 191, (lots 1 thru 38) Tract HH	June 19, 1972
64	BLOCKS 192 THRU 207, RESERVED TRACTS "M" THRU "O", COMMERCIAL TRACT "P", MULTIPLE TRACT "II", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO Unit 20, Block 192, (lots 1 thru 32) Block 193, (lots 1 thru 26) Block 194, (lots 1 thru 73) Block 195, (lots 1 thru 21) Block 196, (lots 1 thru 26)	June 19, 1972

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PAGE No.	DESCRIPTION	FILING DATE
64	Block 197, (lots 1 thru 24)	
	Block 198, (lots 1 thru 22)	
	Block 199, (lots 1 thru 52)	
	Block 200, (lots 1 thru 41)	
	Block 201, (lots 1 thru 45)	
	Block 202, (lots 1 thru 22)	
	Block 203, (lots 1 thru 14)	
	Block 204, (lots 1 thru 15)	
	Block 205, (lots 1 thru 11)	
	Block 206, (lots 1 thru 20)	
	Block 207, (lots 1 thru 17)	
	Tracts "M" thru "O"	
	Tract P	
	Tract II	
65	BLOCKS 208 THRU 223, RESERVED TRACTS "Q" & "R", UNIT TWENTY, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	June 19, 1972
	Unit 20, Block 208, (lots 1 thru 32)	
	Block 209, (lots 1 thru 16)	
	Block 210, (lots 1 thru 35)	
	Block 211, (lots 1 thru 38)	
	Block 212, (lots 1 thru 80)	
	Block 213, (lots 1 thru 71)	
	Block 214, (lots 1 thru 68)	
	Block 215, (lots 1 thru 58)	
	Block 216, (lots 1 thru 50)	
	Block 217, (lots 1 thru 46)	
	Block 218, (lots 1 thru 27)	
	Block 219, (lots 1 thru 14)	
	Block 220, (lots 1 thru 30)	
	Block 221, (lots 1 thru 24)	
	Block 222, (lots 1 thru 25)	
	Block 223, (lots 1 thru 25)	
	Tracts Q & R	
66	BLOCKS 157 THRU 169, A PORTION OF BLOCK 109, COMMERCIAL TRACTS "I" THRU "K", MULTIPLE TRACTS "II" [illegible]RU "KK", UNIT TWENTY-TWO, RIO RANCHO ESTATES, [illegible] COUNTY, NEW MEXICO	Sept. 15, 1972
	Unit 22, Block 109, (lots 15 thru 44)	
	Block 157, (lots 1 thru 20)	
	Block 158, (lots 1 thru 8)	
	Block 159, (lots 1 thru 28)	
	Block 160, (lots 1 thru 21)	
	Block 161, (lots 1 thru 57)	
	Block 162, (lots 1 thru 21)	
	Block 163, (lots 1 thru 30)	
	Block 164, (lots 1 thru 18)	
	Block 165, (lots 1 thru 57)	
	Block 166, (lots 1 thru 60)	
	Block 167, (lots 1 thru 18)	
	Block 168, (lots 1 thru 8)	
	Block 169, (lots 1 thru 19)	
	Tracts I, J & K	
	Tracts II, JJ & KK	
67	BLOCKS 170 THRU 186, UNIT TWENTY-TWO, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Sept. 15, 1972
	Unit 22, Block 170, (lots 1 thru 20)	
	Block 171, (lots 1 thru 14)	
	Block 172, (lots 1 thru 18)	
	Block 173, (lots 1 thru 21)	
	Block 174, (lots 1 thru 41)	
	Block 175, (lots 1 thru 88)	
	Block 176, (lots 1 thru 33)	
	Block 177, (lots 1 thru 42)	
	Block 178, (lots 1 thru 42)	
	Block 179, (lots 1 thru 42)	
	Block 180, (lots 1 thru 41)	
	Block 181, (lots 1 thru 32)	
	Block 182, (lots 1 thru 42)	
	Block 183, (lots 1 thru 34)	
	Block 184, (lots 1 thru 26)	
	Block 185, (lots 1 thru 18)	
	Block 186, (lots 1 thru 49)	
68	REPLAT PORTIONS OF UNITS 20 & 24, RIO RANCHO ESTATES, SANDOVAL COUNTY, NEW MEXICO	Sept. 15, 1972
	Unit 20, Block 126, (lot 44A)	
	Block 168, (lots 72A thru 76A)	
	Block 181, (lot 22A)	
	Block 185, (lot 24A)	
	Unit 24, Block 67, (lot 53A)	

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RIO RANCHO ESTATES, Inc.

PROTECTIVE COVENANTS

Unit________, Block__________, Lot(s) __________

ON THE ABOVE LOT(S) WITHIN RIO RANCHO ESTATES, WHICH ARE PLATTED AS RESIDENTIAL LOTS, THE FOLLOWING RESTRICTIVE COVENANTS, BUILDING RESTRICTIONS, EASEMENTS AND CONDITIONS ARE APPLICABLE. THESE RESTRICTIVE COVENANTS, BUILDING RESTRICTIONS, EASEMENTS AND CONDITIONS DO NOT APPLY TO ANY PROPERTY DESIGNATED OTHER THAN RESIDENTIAL IN THE OFFICIAL PLAT OF RIO RANCHO ESTATES.

1. No structures shall be erected, altered, placed, or permitted to remain on any building plot in Rio Rancho Estates other than single family dwellings, and accessory buildings such as a garage, garden house and the like. No trailer, basement, tent, shack, garage, barn or other out-building erected in Rio Rancho Estates shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence. No structure built on said premises shall be higher than a one-story building.

2. No building shall be erected or placed on any building plot which plot has an area of less than 21,780 square feet, nor width of less than 80 feet at the front building setback line. No building shall be located nearer to the front lot line than 25 feet, or nearer to the rear lot line than 20 feet. No building shall be located nearer than 10 feet to any side lot line. Easements and rights-of-way are hereby reserved unto the Seller for the construction, installation and maintenance of any and all utilities, such as electric light, gas line, drains, sewers, roads, water supply lines, telephone and telegraph or the like, necessary or desirable for public health and welfare. Such easements and rights-of-way shall be confined to a five foot width along the rear and side lines of every building plot and along every street, road or highway abutting the premises, unless otherwise designated on the plat.

3. No unfinished structure as to its exterior shall be permitted to remain on any plot or lot covered by these restrictions for a period exceeding six months from the date of the commencement of construction.

4. Right of access is hereby reserved to Seller for general improvements of any persons' premises or premises of Rio Rancho Estates, but such right of access to any particular premises shall terminate upon commencement of construction by Owner on the premises.

5. No dwelling containing less than 700 square feet of living area, exclusive of garages, carports and accessory buildings shall be permitted on any building plot. Use and occupancy of premises shall be subject to zoning, building, health, sewage disposal, and sanitation regulations of the State of New Mexico, and all government agencies having jurisdiction. No building shall be placed, erected, or altered on any building plot at Rio Rancho Estates until the building plans and specifications have been approved by the Seller, or its designee, which approval shall not be unreasonably withheld and for which approval no charge shall be made. The enforcement and the administration of these restrictions are reserved to the Seller or its designee.

6. No person shall be allowed to keep or harbor on any portion of the within unit of Rio Rancho Estates any animals or poultry other than recognized household pets.

7. No fence or hedge shall be erected or maintained on the premises which shall unreasonably restrict or block the view from an adjoining lot, or which shall materially impair the continuity of the general landscaping plan of Rio Rancho Estates. For this purpose, any fence or hedge erected or maintained which shall exceed four feet in height shall have prior approval of the Seller.

8. No sign or advertisement of any kind, other than name plates or professional signs not to exceed one square foot in area, shall be erected or maintained on the premises without the written approval of the Seller.

9. Sale of lots in the within unit of RIO RANCHO ESTATES shall include all rights of the Seller in and to the street, road, or highway fronting on the same to the centerline, subject however, to the rights of all others to the use of same as public or private highways. The Seller hereby reserves the right to dedicate any or all streets, roads, and highways in the within unit of RIO RANCHO ESTATES to public use without consent of any owners of property in the Subdivision.

10. Rubbish and garbage must be kept in suitable containers and removed from the premises in accordance with sanitation regulations. No rubbish or garbage may be burned or dumped on the premises or any area within two miles of RIO RANCHO ESTATES. No activity shall be permitted on any lot, nor shall anything be done thereon, which may be or become an annoyance or nuisance to the neighborhood.

11. The Seller reserves the right to change, extend, or close any streets or roads or designate any areas for commercial or other uses, on the maps of the within unit of RIO RANCHO ESTATES and to cut new streets or roads, provided such change or changes shall not interfere with ingress or egress to the property of any owner or alter the size of his premises.

12. Invalidation of any one of these covenants by judgment, Court order, or for any other reason, shall in no way affect any of the other provisions, which shall remain in full force and effect.

13. All of the reservations, restrictions, easements, and conditions contained herein shall be deemed covenants running with the land, and shall be binding upon all successive owners thereof.

RR-212-1

A 8816

EXHIBIT A

PROPERTY REPORT

A 8817

EXHIBIT B-1

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

July 1, 1969

IN REPLY REFER TO:
New OILSR Number 0-0352-36-8
Old OILSR Number 36-3-ILS

Jeffrey D. Simon, Esquire
Jacobs Persinger and Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Re: Developer: Rio Rancho Estates, Inc.

Subdivision: Rio Rancho Estates

Dear Mr. Simon:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Statement of Record and the Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued persuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of the statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Sincerely,

Alfred Lehtonen

Alfred Lehtonen
Administrator

A 8818

EXHIBIT B-2

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

September 25, 1969

IN REPLY REFER TO:
OILSR No. 0-0712-36-18

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates
(Consolidation)

Jacobs Persinger & Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Gentlemen:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8819

EXHIBIT B-3

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

October 21, 1969

IN REPLY REFER TO:
OILSR No. 0-0757-36-21

Jacobs Persinger and Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates
Consolidation, Tract T, U, V,
W, X and Blocks 123 through
146 of Unit 13

Gentlemen:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8820

EXHIBIT B-4

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

October 24, 1969

IN REPLY REFER TO:
OILSR No. 0-0773-36-22

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates
Consolidation Unit 22 (Blocks 44 through 63, Tract B and Tract C) Unit 23 (Blocks 45 Through 75, Tracts G, EE and FF

Jacobs Persinger and Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Gentlemen:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8821

EXHIBIT B-5

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

1-10
Reg 12/[illegible]/69

December 18, 1969

IN REPLY REFER TO:
OILSR No. 0-0881-36-25

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates
Subdivision - Consolidation
Blocks 1 through 36 Tracts A,
B, C, and D - Unit 21 and
Blocks 64 through 88 - Unit [illegible]

Jacobs, Persinger and Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Gentlemen:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8822

EXHIBIT B-6

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

December 29, 1969

IN REPLY REFER TO:
OILSR NO. 0-0881-36-25

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates Subdivision
Consolidation Blocks 1 through 36
Tracts A, B, C and D Unit 21 and
Blocks 64 through 38 Unit 22

Jacobs Persinger and Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Gentlemen:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Amendment to the Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of an amendment to a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Amendment to the Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of the statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statement therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8823

EXHIBIT B-7

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

February 10, 1970

IN REPLY REFER TO:
OILSR NO. 0-0773-36-3(A)

Edward B. Winslow, Esquire
Jacobs Persinger and Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates

Dear Mr. Winslow:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto, and became effective February 9, 1970.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of the Statement of Record, a change shall occur affecting any material fact required to be contained in the Statement of Record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective Statement of Record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such Statement of Record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8824

EXHIBIT B-8

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

March 20, 1970

IN REPLY REFER TO:
OILSR NO. 0-0073-36-3(B)

Edward E. Winslow, Esquire
Jacobs Persinger & Parker
Attorneys at Law
70 Pine Street
New York, New York 10005

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates

Dear Mr. Winslow:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8825

EXHIBIT B-9

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

April 29, 1970

IN REPLY REFER TO:
OILSR NO. 0-0073-36-3(C)

Edward B. Winslow, Esquire
Jacobs Persinger & Parker
70 Pine Street
New York, New York 10005

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates

Dear Mr. Winslow:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8826

EXHIBIT E-10

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20411

May 20, 1970

IN REPLY REFER TO:
0-0073-36-3 (D)

Edward B. Winslow, Esquire
70 Pine Street
New York, New York 10005

Re: Rio Rancho Estates, Incorporated
Rio Rancho Estates

Dear Mr. Winslow:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8827

EXHIBIT B-11

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D. C. 20411

July 9, 1970

IN REPLY REFER TO:
OILSR No. 0-0073-36-3(E)
0-0073-36-3

Edward B. Winslow, Esquire
Jacobs, Persinger & Parker
70 Pine Street
New York, New York 10005

Re: Rio Rancho Estates, Inc.
Rio Rancho Estates

Dear Mr. Winslow:

Under the provisions of the Interstate Land Sales Full Disclosure Act, this office has conducted an examination of the Consolidated Statement of Record and Property Report of the captioned subdivision. This examination has revealed that your filing has conformed to the requirements of the Act and the Regulations issued pursuant thereto.

Section 1407(a) of the Act provides that the effective date of a statement of record shall be the thirtieth day after the filing thereof, or such earlier date as may be determined, having due regard to the public interest and the protection of purchasers.

Accordingly, you are hereby advised that the date of this letter is the effective date of the Consolidated Statement of Record filed in connection with the captioned subdivision.

As provided in Section 1407(c) of the Act, if at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement of record, such amendment should be promptly filed. Section 1407(d) provides further that if an effective statement of record includes any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to make the statements therein not misleading, such statement of record may be subject to suspension after an opportunity for a hearing.

Please do not hesitate to contact this office if we may be of service.

Sincerely,

Alfred Lehtonen
Administrator

A 8828

OFFERING STATEMENT

RIO RANCHO ESTATES
Near
ALBUQUERQUE, NEW MEXICO

THE FILING OF THE STATEMENT AND THIS OFFERING STATEMENT WITH THE DEPARTMENT OF STATE OF THE STATE OF NEW YORK DOES NOT CONSTITUTE APPROVAL OF THE SALE OR LEASE OR OFFER FOR SALE OR LEASE BY THE DEPARTMENT OF STATE OR ANY OFFICER THEREOF OR THAT THE DEPARTMENT OF STATE HAS IN ANY WAY PASSED UPON THE MERITS OF THE OFFERING

May 1, 1974
Amended: December 24, 1974

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RR-200-22

1. BACKGROUND OF SUBDIVIDER

Rio Rancho Estates, Inc. (the "Company") was organized in 1961 to acquire title to the subdivision known as Rio Rancho Estates, and the Company is engaged in the business of subdividing and selling such property. 100% of the stock of the Company is owned by AMREP Corporation, an Oklahoma corporation, with offices in New York City; Ocala, Florida; and Tulsa, Oklahoma. (Main office and business headquarters of AMREP Corporation is located at 16 West 61st Street, New York, New York 10023.)

2. BACKGROUND OF OFFICERS

OFFICERS

Office	Name	Address
Chairman of the Board	Irving W. Blum	16 W. 61st St., N.Y., N.Y.
President	Howard W. Friedman	16 W. 61st St., N.Y., N.Y.
Executive Vice President	Chester Carity	16 W. 61st St., N.Y., N.Y.
Vice President	Mitchell S. Roberts	16 W. 61st St., N.Y., N.Y.
Vice President	Daniel Friedman	16 W. 61st St., N.Y., N.Y.
Vice President	Floyd Bailey	3900 So. Boulevard, S.E. Rio Rancho Estates, N.M.
Vice President	Solomon H. Friend	16 W. 61st St., N.Y., N.Y.
Treasurer	Julius L. Ross	16 W. 61st St., N.Y., N.Y.
Secretary	Edward B. Winslow	70 Pine Street, N.Y., N.Y.

Irving W. Blum, Chairman of the Board of Directors of the Company, is a certified public accountant, but he has been primarily engaged in real estate development work for the past 20 years. From 1959 to 1969 he has devoted substantially all of his time to the affairs of the parent corporation, AMREP Corporation ("AMREP"), its predecessor and subsidiaries, and their subdivisions, viz: Rainbow Lakes Estates, a 10,000 acre subdivision located in Central Florida, Silver Springs Shores, an 8,000 acre subdivision also located in Central Florida and Rio Rancho Estates. He now devotes a portion of his time to his personal affairs and other business interests.

Howard W. Friedman, President of the Company is a certified public accountant, but since 1959 he has devoted a major portion of his time to the affairs of AMREP, its predecessor and subsidiaries, and their subdivisions. From 1961 to 1968 he was Secretary and Comptroller of AMREP, and has been President since April 1968.

Since 1954 Chester Carity has been associated as a principal in numerous organizations engaged in the advertising and sale of various products on a nationwide basis, but since 1959 he has devoted a major portion of his time to the affairs of AMREP, its predecessor and subsidiaries, and their subdivisions.

Mitchell S. Roberts was an instructor of marketing research and advertising at the City College of New York from 1946 to 1959. From 1960 to 1962 he was engaged in product development and marketing analytical work, and since 1962 he has been a sales economist for AMREP and the Company.

Daniel Friedman was a practicing public accountant. From prior to 1958 until 1963 he was associated with Schoenfeld-Friedman, Certified Public Accountants. In 1963 he was employed by AMREP as Assistant Controller, became Controller in 1965, Treasurer in 1968, and was elected to the office of Vice President in January 1971.

Floyd Bailey has been engaged in various phases of land development and building since 1959. From 1966-1973 he was employed by Horizon Corporation as their New Mexico Division Manager, and he joined AMREP Corporation in December, 1973 as Vice President and Project Manager.

Solomon H. Friend has been Vice President and General Counsel of AMREP Corporation since 1970. From 1957 through 1969, he was a partner in the firm of Bass & Friend in New York, N.Y.

Julius L. Ross, has been a certified public accountant since 1960. He joined AMREP in December, 1970, was elected Treasurer of the Company in 1971 and Vice President in February, 1973.

Edward B. Winslow has been a partner in the firm of Jacobs Persinger & Parker since February 1, 1968. From January 1963 to January 1968 he was a partner in the firm of Royall, Koegel & Wells and had been associated with that firm for more than 10 years prior to January 1963.

3. GENERAL CHARACTER OF SUBDIVISION

Rio Rancho Estates consists of about 91,049.3 acres of land in New Mexico near Albuquerque. This tract, formerly a cattle ranch, consists of rolling range land. It is bounded in part by the Rio Grande River, with more than two miles bordering the River, and stretches westward to the east rim of the Rio Puerco Canyon. The southeastern portion of the tract is bounded in part by a housing development and in part by the outskirts of metropolitan Albuquerque (Bernalillo County). Rio Rancho Estates lies entirely in Sandoval County; its southern boundary is the Bernalillo County line (which also is the northern limit of metropolitan Albuquerque). The southeastern corner of Rio Rancho Estates is approximately 4½ miles north of Albuquerque's present city line, and about 11½ miles northwest of the heart of downtown Albuquerque. The property may be reached by state highways running northward from Albuquerque, and state highway 528 runs through the eastern portion of the property in a north-south direction. The distance from the center of Rio Rancho Estates to the heart of downtown Albuquerque is about 17 miles.

4. TITLE TO THE SUBDIVISION

The Company owns the fee title to all the lots offered and its title is insured by Lawyers Title Insurance Corporation. The property to be offered to residents of New York ("Property") is divided into approximately 86,176 lots of varying sizes, the majority of which are either one-half or one acre in size, although some lots are of other sizes. The lots are shown on one or more of various plats prepared by Robert C. Miller or Robert K. Walsh, New Mexico Registered Land Surveryor of Albuquerque, New Mexico, which plats have been filed in the Office of the County Clerk of,Sandoval County in Rio Rancho Estates Plat Books as set forth in Schedule 1 attached. Each lot is individually staked at the corners.

Seller warrants and represents that Buyer will receive good and marketable title, and will have peaceful use and occupation of said lot. All warranties and representations contained in this Offering Statement are hereby incorporated and made a part of each Purchase Agreement which shall survive delivery of the deed.

5. OFFERING

The Company is offering both residential and commercial lots for sale. Those lots designated for residential use are for one family homes only. Those lots designated commercial can be used for business, stores, offices or multi-family residences according to the use designated on the filed plats.

Lots may also be purchased for speculative purposes but such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years; that a percentage of the purchase price paid is included therein for use in advertising and development; and that in trying to make a resale the purchasers may be competing with the Company, which has thousands of lots to sell.

The residential lots being offered by the Company in New York State are located in the following described Units of Rio Rancho Estates:

A 8831

Unit	No. of Blocks	No. of Lots	Distance in miles from center of unit to S.E. entrance (first developed area)	Distance in miles from center of unit to geographical center of Rio Rancho Estates
1	98	3,474	11	6½
2	85	3,362	10	7
3	70	2,552	9½	8
4	78	2,647	7	6½
5	85	2,902	7½	5
6	96	3,349	8½	4
7	86	3,063	7	2
8	98	3,632	5½	3½
9	71	2,267	5	5
10	88	2,769	3	4½
11	46	2,005	3½	3
12	92	2,460	5½	½
13	148	4,228	5	2½
16	110	3,500	½	5
17	180	4,196	5	5
20	89	2,618	9	6
21	98	4,600	8½	2½
22	63	2,020	9½	2
23	99	4,323	8	4½
24	16	595	14½	6½
25	165	4,525	8½	5
26	185	7,974	11½	5½

The commercial lots being offered by the Company in New York State are located in the following described Units of Rio Rancho Estates:

Unit	No. of Blocks	No. of Lots	Distance from center of unit to S.E. entrance	Distance from center of unit to center of Rio Rancho Estates
1	2	53	11	6½
2	1	19	10	7
4	1	11	7	6½
5	4	124	7½	5
6	3	88	8½	4
7	6	193	7	2
8	1	19	5½	3½
9	2	36	5	5
10	7	196	3	4½
11	17	774	3½	3
12	16	709	5½	½
13	28	883	5	2½
16	18	192	½	5
17	13	319	5	5
20	4	4	9	6
21	13	13	8½	2½
22	1	8	9½	2
23	5	58	8	4½
24	3	3	14½	6½
25	3	170	8½	5
26	16	16	11½	5½

6. TERMS OF OFFERING AND PRICE LIST

Lots are offered for all cash or on an installment basis. On installment sales, the unpaid balance of the contract price bears interest at the rate established by the Company, prevailing at the time the contract is signed, and lawful in New York State. In installment sales, the periodic payments are applied both to interest and to amortization of principal, and information pertaining to consumer credit required by Federal law is given on each individual contract. The prices for the residential lots follow:

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Location of Lot	*ONE-HALF ACRE* *Total Price*	*ONE ACRE* *Total Price*
Unit 1	$3,500	$6,200
Unit 2	3,500	6,200
Unit 3	3,750	6,650
Unit 4	3,950	7,100
Unit 5	3,750	6,650
Unit 6	3,500	6,200
Unit 7	3,750	6,650
Unit 8	3,950	7,100
Unit 9	4,200	7,600
Unit 10	4,600	8,450
Unit 11	4,600	8,450
Unit 12	3,950	7,100
Unit 13	4,200 to 5,700	7,600 to 10,450
Unit 16	6,450	11,800
Unit 17	4,400 to 5,700	8,050 to 10,450
Unit 20	4,400 to 5,700	8,050 to 10,450
Unit 21	3,950	7,100
Unit 22	3,750	6,650
Unit 23	3,500	6,200
Unit 24	3,500	6,200
Unit 25	4,200	7,600
Unit 26	3,500	6,200

Corner lots are $700 higher than inside lots of corresponding size. Irregularly shaped lots are priced in accordance with their size, their prices being roughly proportionate to the prices for full acre lots. A single lot is one designated by a lot number on a plat and is at least one-half acre in size.

The prices of the Commercial lots vary according to location and size. The lots range in size from 10,000 square feet up. Except with respect to certain of the larger lots, no purchaser may buy less than two lots. Standard lots are 50 front feet. Irregular sizes and special locations priced accordingly.

The prices for commercial/multiple dwelling lots are as follows:

COMMERCIAL/MULTIPLE DWELLING

Unit	*Price of Lot*	*Unit*	*Price of Lot*
1	$3,250 to $11,600	13	$3,150 to $28,100
2	4,100 to 7,400	16	7,250 to 38,750
4	4,250 to 10,300	17	4,100 to 28,100
5	3,450 to 24,350	20	--
6	3,250 to 10,700	21	--
7	3,200 to 26,100	22	3,500 to 3,900
8	3,700 to 8,100	23	2,900 to 10,650
9	4,000 to 13,800	24	--
10	4,900 to 24,800	25	6,300 to 12,800
11	3,750 to 196,550	26	--
12	3,350 to 12,500		

7. ENCUMBRANCES

Lots located in Units 20 thru 26 are subject to purchase money deeds of trusts (mortgages) held by the First National Bank in Albuquerque as Trustee which provide that, upon payment by Buyer of the full purchase price of his lot(s), in accordance with the terms of his purchase contract, such Buyer will receive a release from the lien of the mortgage on his lot(s) without any further payment by the Buyer. The remainder of the Property presently being offered for sale is free and clear of all mortgage liens and encumbrances including that portion which is still under contract of purchase.

8. TAXES

The present tax assessment of the portion of Rio Rancho Estates owned by the Company is approximately $20,710,000, and the total taxes payable for the year 1973 are approximately $551,601.03. The current tax apportioned to each lot not conveyed to a purchaser is about $10.00. Such taxes are to be paid by the Company until the end of the month in which the purchase agreement is executed and thereafter by the purchaser. Until such time as a purchaser has paid the purchase price in full, the Company will collect the amount of taxes from the purchaser and make payments thereof to the taxing authority. Amounts so collected from purchasers will be deposited in a special trust account with the Albuquerque National Bank, and the proceeds of such account will be used only for the payment of taxes.

The tax rate presently is approximately $3.41 per $100 of the assessed value of the land. The assessments on lots conveyed to purchasers now average about 33-1/3% of the purchase price.

9. LAND USE

The plats of this development indicate the use to which the various areas can be used. Residential plats are for single family occupancy only. Commercial plats are for permitted commercial enterprises and multi-family residences. Other plats or parcels have been designated for and set aside to be used for schools, parks, churches and recreational areas, although the Company is not obligated to improve such areas and may deed them to a governmental entity or lot-owners association.

10. BUILDING LOANS – MORTGAGES

The Bank of New Mexico, the American Savings and Loan Association, Security Federal Savings and Loan Association, Albuquerque Federal Savings and Loan Association, and the Sandia Savings and Loan Association, all with offices in Albuquerque, have made mortgage loans on homes erected in the residential area and have indicated that they will continue to do so in the future.

11. COVENANTS AND RESTRICTIONS

The Property is subject to various restrictions, easements, covenants and reservations as set forth below, but the developer believes that none of them will interfere with the use of lots as homesites or, with respect to lots offered for a use other than homesites, for the uses permitted by the restrictive covenants applicable to such lots. The restrictions, easements, covenants and reservations (applicable to the designated lots) are as follows:

(i) Reservations as to certain minerals contained in the Patent from the United States of America to the heirs of Francisco Montes Vigil, et al., recorded in Vol. 2, page 396, Deed Records and Vol. 23, page 83, Miscellaneous Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 1, pages 95 and 98 and Rio Rancho Estates Plat Book 2, pages 21 thru 25, 27 thru 29, 31 and 32).

(ii) Easements and rights of way for streets, roads, ditches, canals, pipe lines, gas lines, telephone and telegraph lines and utility lines.

(iii) Building Restrictions and Covenants affecting the lots as imposed by Rio Rancho Estates, Inc.

(iv) Reservations by A.R. and Allie D. Brownfield of 1/32 of all minerals, as set forth in Warranty Deed recorded Oct. 19, 1948 in Vol. 6, page 136, and Quitclaim Deed recorded in Vol. 6, page 137, Deed Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 1, pages 1 thru 88, 95 and 98 and Rio Rancho Estates Plat Book No. 2, pages 17 thru 25, 27 thru 29, 31 and 32).

(v) Reservation by Baylor and Koontz of 1/25 of all oil, gas and hydrocarbon in deed recorded in Vol. 9, page 338, Deed Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 1, pages 1 thru 88, 95 and 98 and Rio Rancho Estates Plat Book No. 2, pages 17 thru 25, 27 thru 29, 31 and 32).

(vi) Reservation by J.E. Baylor, Jr. and Barbara Jo Baylor, his wife, and J.F. Koontz and Ella Koontz, his wife, of a 32% nonparticipating interest in all minerals, including oil and gas, as set forth in Agreement dated July 24, 1958 and recorded in Vol. 12, page 485, Miscellaneous Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 1, pages 1 thru 88, 95 and 98 and Rio Rancho Estates Plat Book No. 2, pages 17 thru 25, 27 thru 29, 31 and 32).

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(vii) Reservations by the Santa Fe Pacific Railroad Company of oil, gas, minerals, and other rights, as set forth in Warranty Deed dated December 6, 1938, and recorded in Vol. 5, page 42, Deed Records of Sandoval County, New Mexico, as modified by the release from the Atchison, Topeka and Santa Fe Railway Company recorded in Volume 8, page 279, and the releases from the Santa Fe Pacific Railroad Company recorded in Volume 8, page 250, and as Docket No. 30595 release records of Sandoval County, New Mexico, and the release from the Santa Fe Pacific Railroad Company dated September 11, 1970 and recorded as Document No. 37529 on January 25, 1971 in the records of the County Clerk, Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2 , pages 1 thru 15, 17 thru 25, 27 thru 29, 31, 32, 41 and 43 thru 54).

(viii) Reservations by the Santa Fe Pacific Railroad Company of oil, gas, minerals, and other rights, as set forth in Warranty Deed dated August 2, 1948, and recorded in Vol. 6, page 120, Deed Records of Sandoval County, New Mexico, as modified by the release from the Atchison, Topeka and Santa Fe Railway Company recorded in Volume 8, page 279, and the releases from the Santa Fe Pacific Railroad Company recorded in Volume 8, page 250, and as Docket No. 30595 release records of Sandoval County, New Mexico, and the release from the Santa Fe Pacific Railroad Company dated September 11, 1970 and recorded as Document No. 37529 on January 25, 1971 in the records of the County Clerk, Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2, pages 1 thru 15, 17 thru 25, 27 thru 29, 31 thru 37, 41 and 43 thru 54).

(ix) Reservations by the Santa Fe Pacific Railroad Company of oil, gas, minerals, and other rights, as set forth in Warranty Deed dated May 10, 1944, and recorded in Vol. 5, page 514 and Vol. 7, page 33, Deed Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2, pages 9 thru 12, 31 thru 37 and 27 thru 29).

(x) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee, dated August 8, 1969, and recorded as Docket No. 28473 on August 8, 1969, Deed of Trust Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2, pages 1 thru 12).

(xi) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee, dated January 14, 1970 and recorded in Vol. 5, page 484, Deed of Trust Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2, pages 13 thru 15, 17 thru 25, 27 thru 29, 31 and 32).

(xii) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, Trustee, dated April 3, 1970 and recorded in Vol. 5, page 512, Deed of Trust Records of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2, pages 27 thru 29 and 31 thru 37).

(xiii) Deed of Trust from Rio Rancho Estates, Inc. to the First National Bank in Albuquerque, as Trustee, dated January 25, 1971 and recorded as Document No. 35732 on January 25, 1971 in the records of the County Clerk of Sandoval County, New Mexico (applicable to lots as recorded in Rio Rancho Estates Plat Book No. 2, pages 41 and 43 thru 54).

Deeds from the Company to purchasers of lots located in Units 1 thru 16 (Rio Rancho Estates Plat Book No. 1, pages 1 thru 88, 95 and 98) will convey the right to receive one-half (½) of all royalties and/or proceeds of actual mineral production to which the Company becomes entitled and which are attributable to the lots purchased. The Shell Oil Company has been granted the right to drill on certain lots for oil and gas. If the above-described oil and gas rights are enforced against the property of a lot purchaser and such enforcement results in any physical injury to the surface of the lot, prior to the time that title is due to pass to the Purchaser, the Purchaser shall have the option of either (1) accepting title as offered; (2) exchanging his lot for another available lot, which is, at the time of exchange, equal in value to the lot being exchanged (in a registered area); or (3) obtaining a full refund of the purchase price. The Company does not know of the existence of any oil, gas or minerals on these premises which could be removed on a commercially feasible basis by any presently known methods.

The Building Restrictions and Covenants on residential lots (i) prohibit various nonresidential structures and require dwellings to have certain minimum areas of living space, (ii) provide for a minimum size lot on which buildings may be erected, (iii) limit the period during which unfinished structures can remain upon a lot, and (iv) contain other restrictions designed to prohibit undesirable acts and uses of the property.

Restrictive covenants on lots designated for multiple dwelling and commercial uses are designed to prohibit undesirable acts and uses of the lots.

Copies of the restrictive covenants applicable to specific lots sold are furnished to the buyer at the time of execution of the purchase contract.

12. DEFAULT PROVISION

The balance of the net purchase price after down payment shall under no circumstances be deemed or construed to be an obligation of buyers for the payment of money enforceable by suit at law or in equity. If a buyer defaults in the payment of any installment of the purchase price, the buyer has a grace period of sixty (60) days after the due date of any payment before buyer is declared in default. However, if the buyer does not make payment during such grace period, the Company may terminate the purchase contract by notifying the buyer in writing by certified or registered mail of its election to terminate. If the buyer within 14 days after the mailing of such notice brings his account to a current status by paying all past due principal and interest, he will no longer be considered in default. However, if within such 14-day period he does not bring his account to a current status, the purchase agreement will terminate at the expiration of such 14-day period without further notice and the Company then may return the lot(s) covered by the purchase agreement to its inventory and resell it (them) free and clear of any claims, liens, or encumbrances arising out of such purchase contract. Where a buyer allows his purchase agreement to terminate through default, the Company will retain all monies paid under the purchase agreement, including principal and interest, as liquidated damages because the Company has taken the lot or lots off the real estate market, has turned away other prospective purchasers and has incurred or will be incurring development or other expenses.

13. REFUND GUARANTEE

Buyer shall have six months from the date of purchase to make a registered personal inspection of Rio Rancho Estates on a Company-guided tour and have every penny paid to Seller refunded if he is not satisfied in any way, provided Seller is so notified at the time of initial inspection on a form provided by Seller. This provision shall not apply to property purchased while present at, or subsequent to a visit to Rio Rancho Estates, and cannot be exercised by any agent on behalf of Buyer.

14. TITLE INSURANCE

Upon payment of the purchase price in full, lot purchasers receive from the Company warranty deeds to their lots. The Company has a title insurance policy covering all of Rio Rancho Estates, but it does not furnish title insurance to lot purchasers. If title insurance is desired, lot purchasers must order it prior to the closing of title and pay the cost thereof. Such insurance can be secured from the Sterling Title Insurance Company, Albuquerque, New Mexico, agent for the First American Title Insurance Company of Santa Ana, California; or other licensed title insurance companies, from whom the cost of such insurance can be ascertained.

15. LOT OWNERS ASSOCIATION

All common facilities are at present maintained by the Company at its own cost and expense and the Company will continue to assume the costs of such maintenance until at least April 30, 1975. It is anticipated that an association will be organized by that time to which lot owners will belong and to which they will pay dues sufficient to maintain such common facilities and pay for any other responsibilities assumed by such association.

16. EXCHANGE PRIVILEGE

Portions of Units 11 and 16 are the only parts of Rio Rancho Estates offered in New York that have been improved with a water system and utilities in addition to the roads. This improved portion consists of approximately 1,800 residential lots of which approximately 600 have been sold; the remaining 1,200 lots are offered for sale only to purchasers who intend to immediately erect homes.

Purchasers of residential lots located in other units or in the unimproved portions of Units 11 or 16 who desire to erect a home before utilities are available may exchange a single residential lot for one residential building lot of comparable value located in an area already served by utilities, without any additional charge to the lot purchaser. Only one residential lot may be so exchanged for each home to be built and any acreage in exces of one-half acre which a person may have purchased will not be exchanged but must be retained by the purchaser.

The possibility exists that at the time a purchaser is entitled and wishes to make such an exchange there will be no residential lots in the improved area(s) available for exchange. In such event purchaser may retain the lot he purchased or tender its return to the Company and receive a refund of all monies paid. Refunds will be contingent upon the Company's ability to repay.

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Buyer shall have the right to exchange property described herein at any time during the next five years after date of the Purchase Agreement for any other available Property of equal value at no increase in price whatever. If Buyer pays in full for the property described herein within thirty (30) days from the date of the Purchase Agreement, Buyer shall have the right for a period of one year after the date of the Purchase Agreement, to exchange the property described herein for any other available Property of equal value at no increase in price to Buyer whatever. New York State residents can only exchange for lots that have been filed with and accepted by New York State.

17. CLIMATE

The prevailing general weather is typical of the higher altitude, dry continental climates. The average daily range of temperature is relatively high but extreme temperatures are rare as testified by the fact that there is normally less than one day a year when the temperature reaches 100 degrees or drops to zero. Daytime temperature during the winter averages near 50 degrees with only two days on which the temperature does not rise above the freezing mark. In the summer, daytime maxima average less than 90 except in July and with the low humidity and large daily temperature range, both days and nights normally are comfortable. The air is normally dry with an average annual humidity of approximately 43%. "Muggy" days are unknown and the usual humidity during the warmer part of the day is about 30%, dropping down to less than 20% in June, the least humid month of the year. The climate is extremely dry with an average annual rainfall of just over 8 inches. "Arid Continental" characterizes the climate of Albuquerque and vicinity in a minimum number of words. With an average annual rainfall of just over eight inches there is generally insufficient natural moisture to maintain the growth of any but the various native grasses and vegetation. Lawns and gardens grow with normal watering. Irrigation is required to raise commercial crops.

18. TERRAIN

The terrain consists of rolling range land with the eastern boundary about three miles distant from the Rio Grande River at an elevation of about 5,250 feet and ascends, in a westerly direction, to about 6,250 feet. The subsoil structure is pervious sand and gravel and readily absorbs rainfall. There are natural drainage channels and roadside channels which carry the water from the area down into the Rio Grande Valley. The locations of most of these channels are contained in the filed plats. By reason of such absorption and drainage the subdivision is free from risk of flooding.

Many of the lots are burdened with drainage ditches which cut through various portions of the lots being offered for sale. These ditches carry rain water down into the valley and are essential to the drainage system. Lots are purchased subject to such drainage easements and the ditches may not be filled in or covered. The Company guarantees that each lot will have sufficient space, free of ditches, on which to erect a home.

There is also a deep and wide arroyo cutting through the property and certain lot owners may have to travel an additional distance around the arroyo to get to a main road.

19. ROADS

The Property offered has been surveyed and all roads have been completed. The roads are at least 50 feet wide. Approximately 34 miles of the roads in the residential area in Units 11 and 16 has been paved with a macadam surface, while all other roads are compacted dirt, clay or caliche. Roads in the Property are in good condition and drain well. The County of Sandoval has accepted and will maintain all roads on the Property.

20. WATER

Presently water service to lots offered in New York is being furnished only to the residential area of Units 11 and 16. Water is supplied by the Albuquerque Utilities Corporation (the "Utility Company"), an affiliated company. The Utility Company has been licensed by the State of New Mexico as a public utility and franchised to furnish water to the residential area. The Utility Company obtains the water from drilled wells, and the Company is advised that an adequate supply of high quality water suitable for drinking and all other domestic needs can be obtained from such wells. The Utility Company presently is obtaining water from six wells, which will furnish water at a rate of about 5,000 gallons per minute. With the 3,250,000 gallon storage facilities already constructed, these six wells are believed adequate to serve the needs of approximately 8,000 homes. Over 248,374 feet of underground distribution pipe has been installed. The water supply has been tested and approved by local health authorities. At some future date, when and as the demand arises, the Utility Company intends to install additional distribution systems, in the present and succeeding building areas, each system designed to serve an additional 2,000-4,000 homes.

However, the possibility exists that no water service will be available to many of the lots for an indeterminate number of years, until sufficient homes are built to render it economically feasible for the utility to expand the system. No representation or warranty is made that such service will ever be installed or rendered and lot purchasers should not rely on same when making a purchase.

A hook-up charge of $250 for installation and connection of pipes from the water main to a home (normally included in the cost of a home) is presently charged. Water rates are as follows:

WINTER RATE SCHEDULE
FROM OCTOBER 1 TO MARCH 31:

0-5,000 gal.	$3.75 Minimum
Next 20,000 gal.	.25 per/1,000 gal.
Next 25,000 gal.	.22 per/1,000 gal.
Over 50,000 gal.	.19 per/1,000 gal.

SUMMER RATE SCHEDULE
FROM APRIL 1 TO SEPTEMBER 30:

0-5,000 gal.	$3.75 Minimum
Next 95,000 gal.	.19 per/1,000 gal.
Over 100,000 gal.	.17 per/1,000 gal.

A $15 meter deposit is also required.

Due to the topography and the undulations of the Property, the depth to which wells must be drilled is estimated to range from 400 to 850 feet. The cost to Buyer for the drilling of a well ranges from $10 to $18 per foot of total depth, which would include drilling, casing and equipping. If when Buyer is ready to build a home utilities have not reached his site, the Company will exchange a building lot of comparable value in an area served by utilities for a single lot owned by a Buyer. (See EXCHANGE PRIVILEGE)

21. PUBLIC UTILITIES

In addition to a water system, the residential area in Units 11 and 16 is presently served with piped natural gas, electricity and telephone.

ELECTRICITY

Electricity is furnished by the Public Service Company of New Mexico, a public utility regulated and approved by the New Mexico Public Service Commission, to the residential area of Units 11 and 16 in which houses have been erected. The electric company has indicated that it will expand its facilities to serve additional lots as and when houses are constructed thereon subject to its service extension policies whereby Buyer pays the full cost of the extension on an aid-in-construction basis, which cost might then be refunded in whole or in part out of revenues received from the power line over a number of years. At present, the cost of extending electrical service from an area presently served by electric service to Buyer's lot is estimated at $1.60 a foot ($8,448 per mile). Extension of electrical service to a particular lot without intervening development or line extension may not be economically feasible for lot purchasers and there are no legal assurances that the electric company will expand its facilities. In lieu thereof, Buyer may exchange his lot for a building lot of comparable value in an area already served by electrical power. (See EXCHANGE PRIVILEGE)

NET RATE PER MONTH OR PART THEREOF:

Overhead System		*Underground System*	
First	50 KWH at 5.0¢	First	50 KWH at 5.9¢
Next	50 KWH at 3.2¢	Next	55 KWH at 4.1¢
Next	100 KWH at 2.7¢	Next	100 KWH at 3.6¢
Next	400 KWH at 2.1¢	Next	400 KWH at 2.1¢
All Over	600 KWH at 1.4¢	All Over	600 KWH at 1.4¢

MONTHLY MINIMUM CHARGE: The minimum charge per month or part thereof for each residence, apartment, or other individual dwelling unit shall be:

	Overhead System	*Underground System*
Single Phase Service	$2.00	$3.80
Three Phase Service	5.50	5.50
Combined Single & Three Phase Service	7.50	9.30

There is a $10 meter deposit which is refundable after one year.

GAS

Piped gas is furnished by the Southern Union Gas Company to the residential area in Units 11 and 16 in which houses have been erected. The gas company has indicated that it will expand its facilities to serve additional lots as and when houses are constructed thereon, subject to its service extension policies. However, there are no legal assurances that the gas company will so expand its facilities. Buyers pay the normal connecting charge imposed by the gas company, which is a $5.20 opening service charge plus $1.35 per foot for the installation of the pipe from the gas main to the house. The rate schedule for gas is as follows:

MCF/Month	*Basic Rate*
First 1 Mcf per monthly billing period @	$1.800 per Mcf.
Next 3 Mcf per monthly billing period @	.880 per Mcf.
Next 6 Mcf per monthly billing period @	.786 per Mcf.
Next 16 Mcf per monthly billing period @	.691 per Mcf.
Next 25 Mcf per monthly billing period @	.628 per Mcf
Next 50 Mcf per monthly billing period @	.582 per Mcf.
Next 50 Mcf per monthly billing period @	.521 per Mcf.
Excess Mcf per monthly billing period @	.454 per Mcf.

TELEPHONE

Telephone service is furnished by the Mountain Bell Telephone Company to the residential area in Units 11 and 16 in which houses have been erected. The telephone company has indicated that it will expand its facilities to serve additional lots as and when houses are constructed thereon, subject to its service extension policies whereby Buyer pays the full cost of the extension on an aid-in-construction basis. The cost to Buyer for extension of telephone service is not refundable in whole or in part. The present estimated cost for extending telephone service is approximately $.40 per foot. Extension of telephone service to a particular lot without intervening development or line extensions may not be economically feasible for lot purchasers and there are no legal assurances that the telephone company will extend its facilities. Where telephone service is available, Buyer pays the normal $26 installation charge. The rate schedule for telephone service is as follows:

Type of Service	*Rio Rancho*	*Albuquerque*
Private Line	$7.55/mo.	$7.55/mo.
Two-Party Line	$6.25/mo.	$6.25/mo.

Normally, deposits are not required if a person has established telephone service in the past and/or has good credit. If a deposit is required, the minimum is $50.

GARBAGE AND TRASH COLLECTION

Service to individual lot owners is available from three companies: A-1 Disposal Service, Inc., Paradise Services Corp. and Bedford Corp. The approximate cost is as follows:

A-1 Disposal Service, Inc.	Pickup once a week	$3.43 per month.
Paradise Service Corp.	Pickup twice a week	$3.00 per month.
Bedford Corp.	Pickup once a week	$3.45 per month.

22. SEWAGE DISPOSAL FACILITIES

The distance from the surface of the Property to the water table is in excess of 250 feet. The sewage disposal facilities consist of individual septic tanks which are to be installed by the lot purchasers. Such septic tanks comply with the local health laws. The estimated cost of an installed septic tank ranges from $500 to $900 depending on the size, but such cost normally is included in the price of a completed home. Permission for installation of a septic system must be obtained from the New Mexico Department of Health and required fees must be paid. In an area of Unit 16 served by a central sewage system, the charge for installation and connection to a main line is $450 for front footage up to 80 feet, add $5.25 per foot for every foot over 80 feet, sewage rates are presently $4.00 per month for single family residences and mobile homes, and $3.00 per month for apartments.

23. FIRE PROTECTION

The Rio Rancho Estates Fire Department has been organized to render fire preventive service in the development. It is composed of 7 officers and 60 volunteer firemen, has its headquarters in a newly erected firehouse and is equipped with a 1,000 gallon per minute pumper. It also conducts a continuous training program for all members.

24. POLICE PROTECTION

Law enforcement and police protection is provided by the Sandoval County Sheriff's office located in Bernalillo, New Mexico.

25. SURROUNDING COMMUNITIES

The city limits of Albuquerque are 4½ miles from the South-East entrance to Rio Rancho Estates (on State Highway 528) and 9½ miles from the center of the lots being offered. Until recent years the area between the lots being offered and Albuquerque was devoted largely to farming. However, substantial numbers of homes recently have been and still are being built in such area, and it is rapidly becoming a residential area.

The names and population of surrounding communities and distances over paved and unpaved roads to the center of Rio Rancho Estates are shown below:

Name of Community	*Population*	*Paved Roads*	*Unpaved Road*	*Total*
Albuquerque	336,000	5 miles	5.5 miles	10.5 miles*
	(approx.)	12 miles	5.5 miles	17.5 miles**
Bernalillo	4,000	11.5 miles	5.5 miles	17 miles
Corrales	1,700	5 miles	5.5 miles	10.5 miles

*To Albuquerque City Limits.
**To Downtown Albuquerque.

26. PUBLIC FACILITIES

TRANSPORTATION

The Atchison, Topeka & Santa Fe Railroad station in Albuquerque is 12.5 miles from the South-East entrance and 18.5 miles from the center of the lots being offered. The Albuquerque Airport, which is served by Trans World, Continental and Frontier Airlines is 21.5 miles, and the main bus depots in Albuquerque of Greyhound and Continental Trailways bus lines are 18 miles from the center of the lots being offered. The Albuquerque City Bus System provides regular bus service on its Rio Rancho Estates - Downtown Albuquerque run. Transfers can be made to any other part of the city. Buses leave for Albuquerque from the South-East entrance to the subdivision and from Panorama Inn which is adjacent to the subdivision.

SCHOOLS

A new Rio Rancho Elementary School serving grades 1 through 5 and a new High School are scheduled to open during the '74-'75 school year. Also located in Rio Rancho is a satellite school of the Sandoval Elementary School.

The subdivision is served by two school districts, the Albuquerque School District and the Jemez Springs School District. The Jemez Springs schools are 45 miles from the center of the property. The Albuquerque

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schools (which all of the school age residents attend) are the elementary school at Corrales, which is 5.1 miles from the entrance and 11.3 miles from the center of the property being offered, and by the Taylor Junior High School and the new Albuquerque West Mesa Senior High School, which are 11.4 and 17.9 miles, respectively, from the center of the property being offered. There presently is free bus service from the first residential area to the Albuquerque schools.

HOSPITALS

Bataan-Lovelace Northwest Clinic is located near the shopping center and is staffed by three general interns and rotating specialists from the world-famous full-service clinic and hospital located in Southeast Albuquerque. The nearest hospital to the property being offered is located at Albuquerque and is 19 miles from the center of the property being offered. There are 10 hospitals in all, fully staffed, within 25 miles of Rio Rancho Estates. There are numerous doctors and dentists available in Albuquerque and there is a doctor and dentist who maintain offices in their professional building on the property.

SHOPPING

Westside Shopping Plaza, Rio Rancho Estates' shopping center, is located just west of New Mexico Highway 528 and one-half mile north of the Panorama Inn on Southern Boulevard, S.E. A Foodway, Inc. supermarket is located in the Plaza and maintains a complete line of grocery, meat and dairy products. Other stores open for business in the center complex include a fabric shop with complete lines of fabrics, sewing supplies and machines; a candle and card and gift shop; a full service retail flower shop; the Rio Rancho pharmacy. Service stores in the center include a hair styling and barber shop, a laundromat, and professional dry cleaning facility and a Chevron service station.

Also in the center are First State Bank and Albuquerque Federal Savings and Loan Association. Other stores across from the shopping center include a restaurant and delicatessen, a firm dealing in lamps and electrical fixtures, a TV sales and repair shop and a Tastee Freeze operation.

A U.S. Post Office branch is also located here.

In addition, there are innumerable shopping facilities in and near Albuquerque. And there is a sizable shopping center located at Corrales, New Mexico, five miles from the entrance and 11 miles from the center of the property.

CHURCHES

Presently there are 4 churches in Rio Rancho. The first, the Rio Rancho Non-Denomination Community Church is located about 100 yards north of the entrance off Highway 528. The second, a Baptist Church is also located off Highway 528. The third, an Assemblies of God Church is located at 2900 Southern Boulevard S.W. and the St. Thomas Aquinas Catholic Church is located on Sara Road.

Houses of Worship of most other denominations are within twenty miles radius of the community.

27. RECREATIONAL AND COMMUNITY FACILITIES

Two Community Centers, Haynes and the Auditorium have been built complete with clubhouse, swimming pools, kitchen, meeting and social facilities, bathhouses and showers, sun deck, and a recreational program with varied activities, under the direction of a full-time recreation director. There is also a ball park, Little League, basketball court, and putting green for lot owners. A Youth Activity Center has been completed and staffed with a Youth Activity Director. All the above facilities and activities are presently available without charge to lot owners and purchasers under installment purchase contracts. Currently, the Company is maintaining such facilities and activities at its own cost and expense although it is not contractually obligated to do so.

The Rio Rancho Golf and Country Club, a private country club with initiation fees and dues wholly owned by AMREP Corporation, offering an 18-hole golf course and clubhouse, has been completed and is currently in operation. Membership is subject to the rules of the Club. The Club is 4.4 miles from the center of the property.

28. FINANCIAL STATEMENTS

Set forth on the succeeding pages is the financial statement of AMREP Corporation (formerly American Realty and Petroleum Corp.) (the parent of the Company), as of April 30, 1974, which has been certified by J. K. Lasser & Company, independent public accountants, and the financial statement of the Company as of April 30, 1974.

COPY RECEIVED
ROBERT B. FISKE JR.
MAY 5 1977
U.S. ATTORNEY
SO. DIST. OF N.Y.

by LMay